ESTTA Tracking number: **ESTTA184731**

Filing date: **01/04/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	HepaHope, Inc.		
Entity	Corporation	Citizenship	California
Address	152 Technology Drive Irvine, CA 92618 UNITED STATES		

Attorney information	Ehab Samuel Greenberg Traurig, LLP 3161 Michelson Drive Suite 1000 Irvine, CA 92612 UNITED STATES samuele@gtlaw.com Phone:949-732-6500

Registration Subject to Cancellation

Registration No	2961650	Registration date	06/14/2005
Registrant	BIOTEST AG Waldfriedstrasse 4 60528 Frankfurt/Main, GERMANY		

Goods/Services Subject to Cancellation

Class 005. First Use: 1977/07/02 First Use In Commerce: 1997/10/05
Cancelled goods and services in the class: veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, and antiallergic medicines; dermatological, ophtalmological and otological medicines; in-vivo diagnostic preparations for clinical or medical purposes and clinical or medical laboratory use; tissue typing; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies,

natural and recombinant antigens, and microtiter plates, and reagents therefore for veterinary medical laboratory purposes; diagnostic preparations for veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof
Class 009. First Use: 1977/07/02 First Use In Commerce: 1977/10/05 Cancelled goods and services in the class: blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood and respiratory alcohol, anemometers, laboratory robot, DNA hybridization assays and cell agglutination tests
Class 010. First Use: 1977/07/02 First Use In Commerce: 1997/10/05 Cancelled goods and services in the class: syringes, catheters, transdermal delivery systems comprising blood warmers and plasma for clinical use; plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; sample holder, reader, photometer, dipsticks, teststrips, plates and multiwell microtiter plates for blood and virus diagnostics for clinical and diagnostic use

Grounds for Cancellation

Torres v. Cantine Torresella S.r.l.Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Related Proceedings	Opposition No. B1185727 at Office for Harmonization in the Internal Market for Community Trademark Application No. 005307871.

Attachments	Hepahope Petition.pdf (89 pages)(6009246 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Ehab Samuel/
Name	Ehab Samuel
Date	01/04/2008

TRADE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Trademark Registration of:

Registration No.:	2,961,650
Registered:	June 14, 2005
Mark:	BIOTEST
Registrant:	BIOTEST AG CORP.

HepaHope, Inc. Petitioner, v. BIOTEST AG CORP. Registrant.	CANCELLATION NO. _____ PETITION FOR CANCELLATION OF REGISTRATION

Petitioner:	HepaHope, Inc.
Citizenship:	a California corporation
Address:	152 Technology Drive Irvine, California, United States, 92618

HepaHope, Inc. ("Petitioner") believes that it will be damaged by the above-identified registration and hereby petition for cancellation of the same.

The grounds for cancellation are as follows:

1. Petitioner is a California corporation having its principal office at 152 Technology Drive, Irvine, California, United States 92618.

2. Upon information and belief, BIOTEST AG CORP. ("Registrant") is a German corporation, having a principle place of business at Waldfriedstrasse 4 60528 Frankfurt/Main Fed Rep Germany.

3. Petitioner has filed, on March 13, 2006, a U.S. Trademark Application Serial No. 78/836,130 for the mark BIOTESTER ("Petitioner's Mark"), in connection with medical instruments for use in testing compounds, or therapeutics on living tissue.

4. Registrant has registered the mark BIOTEST ("Registrant's Mark"), Registration No. 2,961,650, from Application Serial No. 76/374,498, filed on February 21, 2002, and issued on June 14, 2005.

5. Petitioner believes that it will be damaged by Registrant's Registration No. 2,961,650 and hereby Petitions to cancel it.

6. Pursuant to 37 C.F.R. § 2.88(c) and TMEP § 1109.03, Registrant may not file a statement of use unless Registrant has made use of the trademark in commerce on or in connection with all goods specified in the notice of allowance. Petitioner alleges that Registrant has filed a declaration of use to Registration No. 2,961,650 where use was not made on certain identified goods.

7. Petitioner alleges that Registrant obtained trademark registration for Registration No. 2,961,650 through deliberate deceit and misrepresentation, with full knowledge of the falsity thereof, all to Petitioner's direct and substantial detriment.

8. Registrant has registered the BIOTEST mark in connection with in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter

plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents for research and scientific purposes; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; DNA probes for tissue typing, germ or pathogen identification and blood group determination (under class 001); Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment;

medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, and antiallergic medicines; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic preparations for clinical or medical purposes and clinical or medical laboratory use. antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, and determination of toxic compounds; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human and veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof (under class 005); Medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems comprising blood warmers and plasma for clinical use; apparatus for cell recovery and for handling of cells, including disposable

materials namely plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; measuring and surveying apparatus for clinical and diagnostic use namely sample holder, reader, photometer, dipsticks, teststrips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics for clinical and diagnostic use; all of the foregoing for medical, clinical, diagnostic and/or surgical use (under class 010); and Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for sanitary and hygiene monitoring, laboratory robot, for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in research and/or non-medical laboratories (under class 009).

9. On information and belief, the BIOTEST mark of Registration No. 2,961,650, was not used in commerce by Registrant or any company related to Registrant when Application Serial No. 76/374,498 was filed and pending in connection with any of

the goods identified in the application and the resulting registration, other than possibly in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents for research and scientific purposes; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; DNA probes for tissue typing, germ or pathogen identification and blood group determination (under class 001); pharmaceutical preparations and products for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; antibodies, in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, cell diagnostics, microbiological diagnostics, and determination of toxic compounds; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human medical laboratory purposes; diagnostic preparations for human medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and

nutrient media and ingredients thereof (under class 005); medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers; apparatus for cell recovery and for handling of cells, including disposable materials, measuring and surveying apparatus for clinical and diagnostic use, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing; all of the foregoing for medical, clinical, diagnostic and/or surgical use (under class 010); and plates and multiwell microtiter plates for cell typing, blood and virus diagnostics, including disposable materials; particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood sugar, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, agar strips for determination of air borne germs and for sanitary and hygiene monitoring; kits/systems comprising agar strips, air samplers, particle counters, agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in research and/or non-medical laboratories (under class 009).

10. Registration No. 2,961,650 was improperly issued for the listed goods except possibly in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient

media, cell culture media, and dried media; buffers, salts, solvents for research and scientific purposes; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; DNA probes for tissue typing, germ or pathogen identification and blood group determination (under class 001); pharmaceutical preparations and products for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; antibodies, in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, cell diagnostics, microbiological diagnostics, and determination of toxic compounds; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human medical laboratory purposes; diagnostic preparations for human medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof (under class 005); medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices,

namely containers; apparatus for cell recovery and for handling of cells, including disposable materials, measuring and surveying apparatus for clinical and diagnostic use, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing; all of the foregoing for medical, clinical, diagnostic and/or surgical use (under class 010); and plates and multiwell microtiter plates for cell typing, blood and virus diagnostics, including disposable materials; particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood sugar, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, agar strips for determination of air borne germs and for sanitary and hygiene monitoring; kits/systems comprising agar strips, air samplers, particle counters, agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in research and/or non-medical laboratories (under class 009).

11. On information and belief, Petitioner alleges that the Application Serial No. 76/374,498, which issued into Registration No. 2,961,650 on June 14, 2005, which claims first use of the mark on July 2, 1977 for classes 001, 005, 010 and 009, and first use in commerce on October 5, 1977 for classes 001, 005, 010 and 009, identified goods on which neither Registrant nor any company related to Registrant had used the BIOTEST mark continuously since 1977 and on which neither Registrant nor any company related to Registrant was using the BIOTEST mark as of the date of execution or filing date of the application.

12. Petitioner alleges that the application which resulted in Registration No. 2,961,650 had a declaration which was signed on January 29, 2002 by Martin Reinecke,

Vice President of Strategic Alliances for Registrant and Dirk Steindorf, Managing Director for Registrant. A true and correct copy of the prosecution history for Registration No. 2,961,650 is attached as Exhibit A and is incorporated herein as though set forth in full.

13. Petitioner alleges that Martin Reinecke and Dirk Steindorf signed the declaration of the application reciting the identification of goods that included articles on which the trademark BIOTEST had not and was not being used with knowledge of the falsity of the material representation that the mark was being used on all of the goods identified in the application, for the purpose of obtaining rights to which Registrant was not entitled.

14. Specifically, Registrant, by itself or by its related companies, was not using the BIOTEST mark on the date of first use, the date of first use in commerce and/or the date that the application was signed or filed or at any prior date sufficiently close to the date of signing or the date of filing the application to be a reasonable basis for a claim or use of the BIOTEST mark in connection with veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, blood products for medical use, namely blood plasma; blood substitutes; plasma

substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, and antiallergic medicines; dermatological, ophtalmological and otological medicines; in-vivo diagnostic preparations for clinical or medical purposes and clinical or medical laboratory use; tissue typing; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for veterinary medical laboratory purposes; diagnostic preparations for veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof (under class 005); syringes, catheters, transdermal delivery systems comprising blood warmers and plasma for clinical use; plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; sample holder, reader, photometer, dipsticks, teststrips, plates and multiwell microtiter plates for blood and virus diagnostics for clinical and diagnostic use (under class 010); and blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood and respiratory alcohol, anemometers, laboratory robot, DNA hybridization assays and cell agglutination tests (under class 009).

15. Petitioner alleges that the application that resulted in Registration No. 2,961,650 constituted fraud on the U.S. Patent and Trademark Office.

16. Registrant would not have received Registration No. 2,961,650 for all of the goods identified therein but for the willful material misrepresentation in the application.

17. The Patent and Trademark Office relied on Registrant's materially false statements in approving the application for registration, and but for these false statements and representation, the application would not have been approved for publication and registration.

18. Based on the foregoing, Petitioner avers that it will be damaged by the continued ownership by Registrant of Registration No. 2,961,650.

WHEREFORE, Petitioner prays that this petition for cancellation be granted and that Registration No. 2,961,650 for the BIOTEST mark be cancelled forthwith.

Respectfully submitted,

Dated: January 4, 2008

Peter J. Gluck, Esq.
Ehab M. Samuel, Esq.
Greenberg Traurig LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612
Tel: (949) 732-6500
Attorneys for Petitioner

EXHIBIT A

TRADEMARK APPLICATION SERIAL 76374498

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

02/27/2002 CHAY11 00000142 76374498

01 FC:361 975.00 OP

PTO-1555
(5/87)

*U.S. Government Printing Office: 2000 — 466-232/29119

RATNER & PRESTIA
Suite 301
One Westlakes, Berwyn
P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

FILE SSM-494US TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application/Registration of: BIOTEST AG
For Mark: BIOTEST AND DESIGN
Serial No.: To Be Assigned Filing Date: Herewith
Registration No.: ___ Issue Date: ___
International Classes: 1, 5 and 10

Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

SIR:

Transmitted herewith for filing is (are):

			FEE
☒	An Application for Registration		($325/Class) 975.00
☐	Application for Renewal and Declaration of Use:		
	☐ Section 9 Renewal	($400/Class)	
	☐ Combined / Section 9&8		($500/Class) ___
☐	Declaration of Use:		
	☐ Section 8	($100/Class)	___
	☐ Section 15	($200/Class)	___
	☐ Combined	($300/Class)	___
☐	Notice of Opposition	($200/Class)	___
☐	Notice of Appeal	($100/Class)	___
☐	Amendment to Allege Use	($100/Class)	___
☐	Statement of Use	($100/Class)	___
	☐ Extension of Time	($150/Class)	___
☐	Petition for Cancellation		($300/Class) ___
☐	Notice of Opposition		($300/Class) ___
☐	Other: ___		___
	TOTAL CHARGES		975.00

The Assistant Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 18-0350. A duplicate copy of this fee sheet is enclosed.

Respectfully submitted,

James C. Simmons
Attorney of Record

Dated: February 21, 2002
Encl.

EXPRESS MAIL Mailing Label Number: **EV 043719474 US**
Date of Deposit: **February 21, 2002**

I hereby certify that this paper and fee are being deposited, under 37 C.F.R. § 1.10 and with sufficient postage, using the "Express Mail Post Office to Addressee" service of the United States Postal Service on the date indicated above and that the deposit is addressed to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

James C. Simmons

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SSM-494US TRADEMARK

In re Application of: **BIOTEST AG**

For: **BIOTEST AND DESIGN**

International Classes: **1, 5, 10**

MARK: **BIOTEST AND DESIGN**

International Classes: 1, 5, 10

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Applicant: BIOTEST AG a German Corporation
having a business address of
Waldfriedstrasse 4
60528 Frankfurt/Main, Germany

The above-identified applicant requests registration of the trademark as shown in the accompanying drawing for the following goods: Chemicals used in industry and science; in-vitro diagnostic agents, especially for industrial and scientific purposes; test kits and reagents for industrial purposes; ready-to-use culture media; nutrient media and ingredients thereof; systems for determining resistance and for identification of germs; buffers, salts, solvents and reagents for the test kits; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes, International Class 1.

Pharmaceutical and veterinary preparations and products; preparations for sanitary purposes; dietetic substances adapted for medical use; food for babies; plasters; materials for dressing; pharmaceutical preparations for haematology; intensive care medicine; transplantation medicine and for influencing blood coagulation; immunoglobulin preparations; serum preparations, especially serum proteins and solutions comprising the same; human albumin; blood products; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immunoglobulines; blood coagulation preparations, especially coagulation factors; antibiotics; narcotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-

inflammatory, antiallergic, hyposensitizing and detoxifying medicines; dermatological, ophtalmological and otological medicines; products for in-vivo diagnostic purposes; antibodies, especially monoclonal antibodies for use in in-vivo diagnostics and for therapy; in vitro diagnostic agents for medical purposes, especially for proteins such as antibodies, monoclonal antibodies or immunoglobulines, or nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics and sanitary (hygiene) monitoring; test kits and reagents, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of substances, especially toxic substances, especially test kits on serological and immune genetic basis and reagents therefore; immunoassays such as ELISA's and reagents therefore; diagnostic agents for infections, International Class 5;

Surgical, medical, dental and a veterinary instruments and apparatus; bottles and containers for storage and conservation of solutions for transfusions and infusions; instruments, apparatus or devices for removal and determination of micro-organisms from various media; apparatus for (micro) determination of interesting substances, especially labelled substances, for diagnostic purposes; transfusion and infusion apparatus and devices; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus for determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as haemoglobin; apparatus for determination of air borne germs and for sanitary (hygiene) monitoring, International Class 10;

The applicant further requests that such trademark be registered in the United States Patent and Trademark Office on the Principal Register established by the Lanham Act of July 5, 1946 (15 U.S.C. §1051 et. seq., as amended).

The applicant is using the mark in commerce on and in connection with the above identified goods. One (1) specimen showing the mark as used in commerce is submitted with this application.

I) Date of first use of the mark anywhere: **July 2, 1977**

II) Date of first use of the mark in commerce which the U. S. Congress may regulate: **October 5, 1997**

III) Type of Commerce: Between the U.S. and **Germany**.

IV) The mark is applied to labels, packaging for and/or directly to the goods.

The mark consists of the word BIOTEST proximate a red triangle device with a red ball or circle at each of the vertices of the triangle device.

POWER OF ATTORNEY

The applicant hereby appoints Paul F. Prestia, Allan Ratner, Andrew L. Ney, Kenneth N. Nigon, Kevin R. Casey, Benjamin E. Leace, James C. Simmons, Lawrence E. Ashery, Robert L. Anderson, Christopher R. Lewis, Jacques L. Etkowicz, Jonathan H. Spadt, Joshua L. Cohen, Jack J. Jankovitz, Daniel N. Calder and Kevin W. Goldstein all members of the Bar of the Commonwealth of Pennsylvania, and all of Ratner & Prestia, Suite 301, One Westlakes, Berwyn, P. O. Box 980, Valley Forge, PA 19482-0980,, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration. Correspondence and inquiries concerning this matter should be directed to:

James C. Simmons
Ratner & Prestia
Suite 301
One Westlakes, Berwyn
P. O. Box 980
Valley Forge, Pennsylvania 19482-0980
(610) 407-0700

APPOINTMENT OF DOMESTIC REPRESENTATIVE BY FOREIGN APPLICANT

Applicant hereby designates Paul F. Prestia, Allan Ratner, Andrew L. Ney, Kenneth N. Nigon, Kevin R. Casey, Benjamin E. Leace, James C. Simmons, Lawrence E. Ashery, Robert L. Anderson, Christopher R. Lewis, Jacques L. Etkowicz, Jonathan H. Spadt, Joshua L. Cohen, Jack J. Jankovitz, Daniel N. Calder and Kevin W. Goldstein all of Ratner & Prestia, Suite 301, One Westlakes, Berwyn, P. O. Box 980, Valley Forge, PA 19482-0980, as its domestic representatives upon whom notices or process in proceedings affecting the trademark/service mark may be served.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Under the laws of Germany, the position of the individual signing is equivalent to that of an officer in a United States corporation.

BIOTEST AG

By: ppa. [signature] Reinecke; VP Strategic Alliances
Signature

D. Steindorf, Managing Director
Print or Type Name & Title

Date: 29.01.02

Enclosures: Drawing, Specimen/Facsimile, Check

The Commissioner is hereby authorized at any time to charge any fees required, or credit any overpayment, to Deposit Account No. 18-0350.

Applicant: **BIOTEST AG**
(A German Corporation)

P. O. Address: **Waldfriedstrasse 4**
60528 Frankfurt/Main Germany

Date of First Use: **July 2, 1977**

Date of First Use in Interstate Commerce: **October 5, 1997**

Goods: Chemicals used in industry and science; in-vitro diagnostic agents, especially for industrial and scientific purposes; test kits and reagents for industrial purposes; ready-to-use culture media; nutrient media and ingredients thereof; systems for determining resistance and for identification of germs; buffers, salts, solvents and reagents for the test kits; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes, International Class 1.

Pharmaceutical and veterinary preparations and products; preparations for sanitary purposes; dietetic substances adapted for medical use; food for babies; plasters; materials for dressing; pharmaceutical preparations for haematology; intensive care medicine; transplantation medicine and for influencing blood coagulation; immunoglobulin preparations; serum preparations, especially serum proteins and solutions comprising the same; human albumin; blood products; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immunoglobulines; blood coagulation preparations, especially coagulation factors; antibiotics; narcotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines; dermatological, ophtalmological and otological medicines; products for in-vivo diagnostic purposes; antibodies, especially monoclonal antibodies for use in in-vivo diagnostics and for therapy; in vitro diagnostic agents for medical purposes, especially for proteins such as antibodies, monoclonal antibodies or immunoglobulines, or nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics and sanitary (hygiene) monitoring; test kits and reagents, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of substances, especially toxic substances, especially test kits on serological and immune genetic basis and reagents therefore; immunoassays such as ELISA's and reagents therefore; diagnostic agents for infections, International Class 5;

Surgical, medical, dental and a veterinary instruments and apparatus; bottles and containers for storage and conservation of solutions for transfusions and infusions; instruments, apparatus or devices for removal and determination of micro-organisms from various media; apparatus for (micro) determination of interesting substances, especially labelled substances, for diagnostic purposes; transfusion and infusion apparatus and devices; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus for determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as haemoglobin; apparatus for determination of air borne germs and for sanitary (hygiene) monitoring, International Class 10;

Biotest

SPECIMENS

Mark: **BIOTEST AND DESIGN**

International Class: 1, 5, 10

Applicant: **BIOTEST AG**

*** User: acollins ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	9456	N/A	0	0	0:03	*b{"iy"}o*[bi,ti]
02	22333	N/A	0	0	0:07	*t{v:2}{"scz"}t*[bi,ti]
03	66	N/A	0	0	0:01	1 and 2
04	41	0	41	14	0:05	3 not dead[ld]
05	55570	N/A	0	0	0:01	260121
06	2093	N/A	0	0	0:01	260509
07	223	N/A	0	0	0:01	5 and 6
08	124	0	3	124	0:05	7 not dead[ld]

Session started 7/2/02 11:29:43 AM
Session finished 7/2/02 11:42:19 AM
Total search duration 0 minutes 24 seconds
Session duration 12 minutes 36 seconds

Default NEAR limit= 1 ADJ limit= 1

*** User: acollins *** Serial Number: 78092091 *** 7/2/02 11:22:52 AM ***

[Typed Drawing]

Mark
SELF BIO-TEST

Pseudo Mark
SELF BIO TEST

Goods and Services
IC 005. US 006 018 044 046 051 052. G & S: self test for biological infection

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
78092091

Filing Date
November 7, 2001

Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) DeFeudis, Edward, Craig INDIVIDUAL UNITED STATES 8958 Froude Ave. Surfside FLORIDA 33154

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

*** User: acollins *** Serial Number: 78092102 *** 7/2/02 11:23:17 AM ***

[Typed Drawing]

Mark
BIO-TEST KIT

Goods and Services
IC 009. US 021 023 026 036 038. G & S: test kit for biological testing

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
78092102

Filing Date
November 7, 2001

Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) DeFeudis, Edward, Craig INDIVIDUAL UNITED STATES 8958 Froude Ave. Surfside FLORIDA 33154

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

[Typed Drawing]

Mark
SELF BIO-TEST KIT

Pseudo Mark
SELF BIO TEST KIT

Goods and Services
IC 005. US 006 018 044 046 051 052. G & S: self test for biological infection

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
78092089

Filing Date
November 7, 2001

Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) DeFeudis, Edward, Craig INDIVIDUAL UNITED STATES 8958 Froude Ave. Surfside FLORIDA 33154

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

[Typed Drawing]

Mark
HOME BIO-TEST

Pseudo Mark
HOME BIO TEST

Goods and Services
IC 005. US 006 018 044 046 051 052. G & S: Home test for biological infection

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
78092077

Filing Date
November 7, 2001

Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) DeFeudis, Edward Craig INDIVIDUAL UNITED STATES 8958 Froude Ave. Surfside FLORIDA 33154

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

[Typed Drawing]

Mark
HOME BIO-TEST KIT

Pseudo Mark
HOME BIO TEST KIT

Goods and Services
IC 005. US 006 018 044 046 051 052. G & S: Home testing kit for biological infection

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
78092075

Filing Date
November 7, 2001

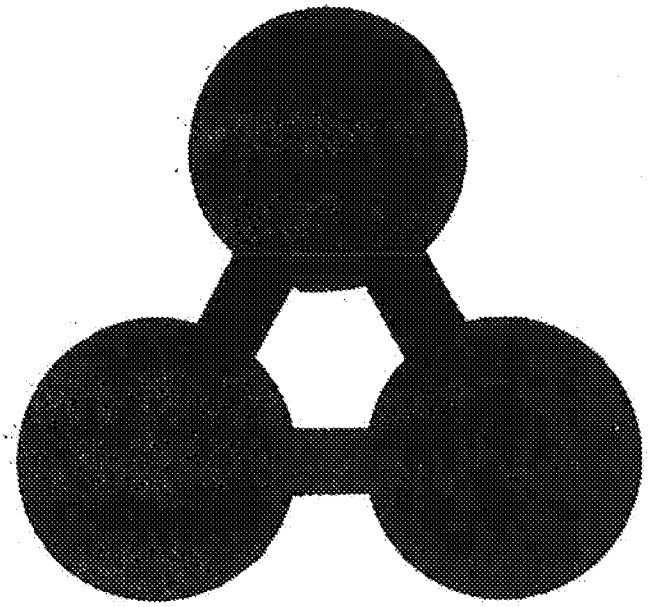
Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) DeFeudis, Edward Craig INDIVIDUAL UNITED STATES 8958 Froude Ave. Surfside FLORIDA 33154

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE



Goods and Services

IC 009. US 026. G & S: Containers and Apparatus for Drawing, Applying and Separating Transfusion and Infusion Solutions in the Laboratory. FIRST USE: 19770702. FIRST USE IN COMMERCE: 19771005

IC 005. US 006 018. G & S: Blood Fractions, Bandage Materials for Health Purposes, and Disinfectants. FIRST USE: 19770702. FIRST USE IN COMMERCE: 19771005

IC 001. US 006. G & S: Biochemicals-Namely, Nutrient Media for Use in Tissue Culture for Laboratory Use. FIRST USE: 19770702. FIRST USE IN COMMERCE: 19771005

Mark Drawing Code

(2) DESIGN ONLY

Design Code

010905 260115 260121 260509 260521

Serial Number

73164034

Filing Date

March 28, 1978

Publication for Opposition Date

July 27, 1982

Registration Number

1212867

Registration Date

October 19, 1982

Owner Name and Address

*** User? acollins *** Serial Number: 73164034 ***

(REGISTRANT) Biotest-Serum-Instut GmbH CORPORATION FED REP GERMANY
Flughafenstr. 4 Frankfurt am Main-Niederrad FED REP GERMANY D-6000

(LAST LISTED OWNER) BIOTEST A.G. CORPORATION BY CHANGE OF NAME FROM FED REP GERMANY D-6000 FRANKFURT AM MAIN-NIEDERRAD FED REP GERMANY

Assignment Recorded
ASSIGNMENT RECORDED

Section 44 Indicator
SECT44

Type of Mark
TRADEMARK

Register
PRINCIPAL

Affidavit Text
SECT 15. SECT 8 (6-YR).

Live Dead Indicator
LIVE

Attorney of Record
LEONARD HORN

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/374498

APPLICANT: BIOTEST AG

CORRESPONDENT ADDRESS:
JAMES C. SIMMONS
RATNER & PRESTIA
ONE WESTLAKES, BERWYN STE 301
P.O. BOX 980
VALLEY FORGE, PENNSYLVANIA 19482-0980

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
ecom115@uspto.gov

MARK: BIOTEST

CORRESPONDENT'S REFERENCE/DOCKET NO: SSM-494US

MAILING DATE: JUL 18 2002

CORRESPONDENT EMAIL ADDRESS:
N/A

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Mailing date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit http://www.uspto.gov/teas/index.html and follow the instructions.

To respond formally via E-mail, visit http://www.uspto.gov/september11/tmelecresp.htm and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examiner's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at http://tarr.uspto.gov/

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at http://www.uspto.gov/main/trademarks.htm

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

RE: Serial Number 76/374498 – BIOTEST and Design

The assigned examining attorney has reviewed the referenced application and determined the following.

PRIOR PENDING APPLICATIONS

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), the examining attorney encloses information regarding pending Application Serial Nos. 78/092091, 78/092102, 78/092089, 78/092077, and 78/092075. 37 C.F.R. §2.83.

ABAN. ABAN. ABAN. ABAN. ABAN.

There may be a likelihood of confusion between the applicant's mark and the marks in the above noted applications under Section 2(d) of the Act. The filing dates of the referenced applications precede the applicant's filing date. If one or more of these earlier-filed applications matures into a registration, the examining attorney may refuse registration under Section 2(d).

IDENTIFICATION AND CLASSIFICATION OF GOODS

The identification of goods is unacceptable as indefinite and includes goods which may be classified in more than one class. TMEP section 1402.01. The applicant must amend the identification to clarify the exact nature of the goods where indicated below and to classify the goods correctly. Also, in amending the identification, the applicant should be as complete and specific as possible and avoid the use in any indefinite or overly broad terms or phrases.

Media for bacteriological cultures are classified in International Class 5. It is unclear whether many of the goods listed in International Classes 1 and 10 are "medical" equipment or "laboratory" equipment in nature. Medical equipment and apparatus (used for the actual treatment of patients) are classified in International Class 10. Laboratory equipment and apparatus (used for research purposes) are classified in International Class 9. For this reason, in these cases the examining attorney has suggested an amended identification for both International Class 9 and International Class 10, unless the nature of use has already been clearly specified in the identification.

The applicant is encouraged to use the *Trademark Acceptable Identification of Goods and Services Manual* as a reference in amending the identification of goods. This resource can be found at http://atlas/netahtml/tidm.html or http://www.uspto.gov/web/offices/tac/doc/gsmanual/index.html.

The applicant must rewrite the identification of goods in its entirety because of the nature and extent of the amendment. 37 C.F.R. §2.74(b). The applicant should also delete all parentheses from the identification.

The applicant may adopt the following identification, if accurate (amendments shown in bold type):

> Chemicals used in industry and science **[indicate specific use]**; in-vitro diagnostic **preparations** for scientific purposes; test kits **comprising [specify primary components of kits (Note: primary components must be classified in International Class 1 for kits to be classified in International Class 1)]** and reagents for **[indicate specific use, e.g., scientific, research]** purposes; systems for determining resistance and for identification of germs **comprising [specify primary components of systems (Note: primary components must be classified in International Class 1 for systems to be classified in International Class 1)]**; test kits comprising buffers, salts, solvents and reagents for **[indicate specific use, e.g., scientific, research]** purposes; DNA probes for **[indicate specific use, e.g., scientific, research]** purposes, in International Class 1;

Pharmaceutical and veterinary preparations and products, **namely, [specify nature and use (i.e., what disease, illness, condition used to treat)]**; preparations for sanitary purposes, **namely, [specify goods by common commercial name]**; dietetic substances adapted for medical use, **namely, [specify goods by common commercial name]**; food for babies; **medical** plasters; materials for **[specify, e.g., wound, burn, surgical]** dressings; pharmaceutical preparations for hematology; intensive care medicine, **namely, [specify goods by common commercial name]; medicines for use in** transplantation **procedures** and for influencing blood coagulation; immunoglobulin preparations **for treatment of [specify disease, illness, condition used to treat]**; serum preparations **and** serum proteins and solutions comprising the same **for treatment of [specify disease, illness, condition used to treat]**; human albumin **for [specify use, e.g., clinical, medical use]; blood products for [specify, e.g., human, veterinary] use, namely,** blood **plasma,** blood substitutes, plasma substitutes and plasma expanders for **[specify, e.g., clinical or medical laboratory purposes]**; vaccines, especially on basis of immunoglobulines; blood coagulation preparations, especially coagulation factors for **[specify, e.g., clinical or medical laboratory use]**; antibiotics; narcotics **for treatment of [specify disease, illness, condition used to treat]**; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines for use on **[specify, e.g., blood and hematopoetic organs]**; dermatological, ophthalmological and otological medicines; in-vivo diagnostic **preparations for [specify use, e.g., clinical or medical laboratory use]**; antibodies, **namely,** monoclonal antibodies for use in in-vivo **[specify, e.g., clinical, medical]** diagnostics and for **patient [indicate type of therapy]** therapy; in vitro diagnostic agents for medical purposes, especially for **[clarify nature of use]** proteins such as antibodies, monoclonal antibodies or immunoglobulines, or nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics and sanitary **and hygiene** monitoring; test kits **comprising [specify primary components of kits (Note: primary components must be classified in International Class 5 for kits to be classified in International Class 5)]** and reagents **for [indicate use, e.g., clinical or medical laboratory use]**, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, **detection** of toxic substances; **test kits comprising [specify primary components of kits (Note: primary components must be classified in International Class 5 for kits to be classified in International Class 5)]** on serological and immune genetic basis and reagents therefore **for [indicate use, e.g., clinical or medical laboratory use]**; immunoassays such as ELISA's comprising **[specify primary components of immunoassays (Note: primary components must be classified in International Class 5 for immunoassays to be classified in International Class 5)]** and reagents therefore **for [indicate use, e.g., clinical or medical laboratory use]**; diagnostic **preparations** for **[specify use, e.g., clinical or medical laboratory use] in the treatment of** infections; **media for bacteriological cultures, namely, ready-to use culture media and nutrient media and ingredients thereof,** in International Class 5;

Laboratory instruments, apparatus and equipment for scientific or medical research use, namely, plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; instruments, apparatus and devices for removal and determination of

micro-organisms from various media, namely, [specify goods by common commercial name]; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials, namely, [specify goods by common commercial name]; measuring and surveying apparatus for determination and quantification of microorganisms in air, liquids and on surfaces, namely, [specify goods by common commercial name]; measuring and surveying apparatus for determination and quantification of blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as haemoglobin, namely, [specify goods by common commercial name]; apparatus for determination of air borne germs and for sanitary and hygiene monitoring, namely, [specify goods by common commercial name], in International Class 9;

Surgical, medical, dental and veterinary instruments apparatus **and equipment for clinical or diagnostic use, namely, [specify goods by common commercial name];** bottles and containers for storage and conservation of solutions for transfusions and infusions; instruments, apparatus and devices for removal and determination of micro-organisms from various media, **namely, [specify goods by common commercial name];** apparatus for micro determination of labelled substances for diagnostic purposes, **namely, [specify goods by common commercial name];** transfusion and infusion apparatus and devices, **namely, [specify goods by common commercial name];** blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials, **namely, [specify goods by common commercial name];** measuring and surveying apparatus for determination and quantification of blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as haemoglobin, **namely, [specify goods by common commercial name]; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics,** in International Class 10.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

ADDITIONAL CLASS OF GOODS

If the applicant adopts the suggested amendment to the identification of goods, the applicant must amend the classification to International Classes 1, 5, 9 and 10. In that case, the applicant must also comply with each of the following.

(1) The applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP section 1403.01.

(2) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(a); TMEP sections 810.01 and 1403.01. Effective January 10, 2000, the fee for filing a trademark application is $325 for each class. This applies to classes added to pending applications as well as to new applications filed on or after that date.

OWNERSHIP OF PRIOR REGISTRATION

If the applicant is the owner of Registration No. 1,212,867, the applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812. See attached registration.

A properly worded claim of ownership should read as follows:

The applicant is the owner of U.S. Registration No. 1,212,867.

DRAWING CONTAINS COLOR

The drawing of the mark contains color. A drawing must be in black and white. Therefore, the applicant must submit a new drawing showing the mark clearly and conforming to 37 C.F.R. §2.52. If the applicant wishes to depict color in the drawing, then the applicant must provide a clear and specific description of what the color is and where the color appears in the mark. 37 C.F.R. §2.52(a)(2)(v); TMEP §807.09(c).

If the applicant includes a description of the color and where it appears in the mark, the Office will presume that the applicant is claiming color as a feature of the mark. If the applicant does not consider color to be a feature of the mark, the applicant should not submit a description of the color and where it appears in the mark.

SPECIMENS FILED BUT MISLAID

While the application file indicates that the applicant submitted the required specimens (one per class), this Office apparently misplaced these specimens. Please submit additional specimens identical to that originally filed. The examining attorney regrets any inconvenience to the applicant.

Alicia P. Collins
Trademark Examning Attorney
Law Office 115
(703) 308-9115 ext, 186
(703) 872-9875 (fax)

RatnerPrestia

Suite 301, One Westlakes, Berwyn
P.O. Box 980, Valley Forge, PA 19482-0980
(610) 407-0700

FILE SSM-494US TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application/Registration of:	BIOTEST AG		
For Mark:	BIOTEST AND DESIGN		
Serial No.:	76/374,498	Filing Date:	February 21, 2002
Registration No.:		Issue Date:	
International Class:	9		

Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

SIR:

Transmitted herewith for filing is (are):

		FEE
☐	An Application for Registration ..... ($335/Class)	
☐	Application for Renewal and Declaration of Use:	
☐	Section 9 Renewal ..... ($400/Class)	
☐	Combined / Section 9&8 ..... ($500/Class)	
☐	Declaration of Use:	
☐	Section 8 ..... ($100/Class)	
☐	Section 15 ..... ($200/Class)	
☐	Combined ..... ($300/Class)	
☐	Notice of Appeal ..... ($100/Class)	
☐	Amendment to Allege Use ..... ($100/Class)	
☐	Statement of Use ..... ($100/Class)	
☐	Extension of Time ..... ($150/Class)	
☐	Petition for Cancellation ..... ($300/Class)	
☐	Notice of Opposition ..... ($300/Class)	
☒	Other: Additional Class	335.00
	TOTAL CHARGES	335.00

The Assistant Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 18-0350. A duplicate copy of this fee sheet is enclosed.

Respectfully submitted,

James C. Simmons
Attorney of Record

Dated: January 14, 2003
Encl.

The Assistant Commissioner for Trademarks is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on:

Date: 14 Jan 2003

James C. Simmons

SSM-494US TRADEMARK

Please place on Upper Right Corner
of Response to Office Action ONLY.
Examining Attorney: COLLINS, ALICIA
Serial Number: 76/374498

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	**BIOTEST AND DESIGN**	:	Examining Attorney:
Serial No.:	76/374,498	:	Alicia Collins
Filed:	February 21, 2002	:	Law Office: 115
Applicant:	BIOTEST AG	:	

AMENDMENT

BOX RESPONSES FEE

To The Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

S I R :

Responsive to the Office Action dated July 18, 2002, please amend the above-identified application as follows.

Please delete the entire description of goods and substitute therefor the following.

Class 1: Chemicals used in industry and science; in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring

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01 FC:6001 335.00 OP

on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes for tissue typing, germ or pathogen identification and blood group determination, International Class 1.

Class 5: Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; narcotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment digestive organs and

corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines for medical uses; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic preparations for clinical or medical purposes and laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic compounds and sanitary and hygiene monitoring; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human and veterinary medical laboratory purposes; immunoassays such as ELISA's , consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof, International Class 5;

Class 9: Laboratory instruments, apparatus and equipment for scientific or medical research use, namely plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; instruments, apparatus and devices for removal and determination of micro-organisms from various media; blood warmers; apparatus for cell recovery and for

handling of cells, including disposable materials; measuring and surveying apparatus for determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; apparatus for determination of air borne germs and for sanitary and hygiene monitoring, International Class 9;

Class 10: Surgical, medical, dental and a veterinary instruments, apparatus and equipment for clinical or diagnostic use, namely devices and systems for determination of air borne germs and for determination of particle size and number in air; devices for clean room air monitoring; bottles and containers for storage and conservation of solutions for transfusions and infusions; instruments, apparatus or devices for removal and determination of micro-organisms from various media; apparatus for (micro) determination of interesting substances, especially labeled substances, for diagnostic purposes; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus for determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; apparatus for determination of air borne germs and for sanitary and hygiene monitoring; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; in International Class 10.

At the end of page 4 of the original application insert the following: Color is a feature of the mark. The design portion of the mark is red and the word portion of the mark is in black ink.

Applicant is the Owner of U.S. Trademark Registration No. 1,212,867.

REMARKS

Applicant has amended the description of goods to by and large to adopt the suggestion of the Examiner.

Applicant is submitting with this Amendment the required fee for the additional International Class of goods not covered by the fee already paid.

Applicant has also indicated that color is a feature of the mark, the mark being as shown in the enclosed replacement specimen being a combination of a design and the word BIOTEST. The design portion of the mark is a triangle with a ball at each of the vertices of the triangle. The entire design portion of the mark is red and that color is a feature of the mark.

Applicant respectfully submits that the applicant BIOTEST AG is a continuation of a company founded in Germany in 1946 under the name BIOTEST Serum Institute. The oldest registration in Germany was obtained in the decade of the 1950's. In the decade of the 1970's BIOTEST AG extended their business, which was mainly blood products, to the United States. This is evidenced by Trademark Registration 1,212,867, which was obtained October 19, 1982, by the predecessor company BIOTEST Serum Institute GmbH, which now by change of name is know as BIOTEST AG.

In view of the foregoing amendments and remarks it is respectfully submitted that the above-identified application is in condition for publication and a notice to that effect is earnestly solicited.

Respectfully submitted,

James C. Simmons
Attorney for Applicant

JCS/mc

Date: January 14, 2003

Ratner & Prestia
Suite 301
One Westlakes, Berwyn
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

The Assistant Commissioner for Trademarks is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on:

Date: 14 January 2003

James C. Simmons

Biotest

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/374498

APPLICANT: BIOTEST AG

CORRESPONDENT ADDRESS:
JAMES C. SIMMONS
RATNER & PRESTIA
ONE WESTLAKES, BERWYN STE 301
P.O. BOX 980
VALLEY FORGE, PENNSYLVANIA 19482-0980

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
ecom115@uspto.gov

MARK: BIOTEST

CORRESPONDENT'S REFERENCE/DOCKET NO: SSM-494US

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

FINAL ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/374498 – BIOTEST and Design

This letter responds to the applicant's communication filed on January 16, 2003. The examining attorney has carefully reviewed the applicant's arguments and amendments in favor of registration. The noted prior pending applications have all abandoned and thus no longer remain a potential bar to registration. The claim of prior registration is acceptable and has been entered into the application record. As to the remaining issues, the examining attorney has determined the following.

Identification and Classification of Goods

In the Office action mailed on July 18, 2002, the examining attorney provided the applicant with very detailed suggestions for amending the identification of goods; however, it appears that the applicant has ignored many of these suggestions and requirements. Most notably, in numerous places where the examining attorney required that the applicant amend the identification to specify the goods by common commercial name, the applicant failed to do so.

For this reason, the identification of goods remains unacceptable as indefinite and includes goods which appear to be incorrectly classified. TMEP section 1402.01. The applicant must amend the identification to clarify the exact nature of the goods and to classify the goods correctly. In addition, the applicant must amend the identification to delete all parentheses.

The applicant should use the Office action mailed on July 18, 2002, and the *Trademark Acceptable Identification of Goods and Services Manual* (http://atlas.uspto.gov/netahtml/tidm.html) as references for amending the identification of goods. Also, when amending the identification of goods, the applicant should also be cognizant of the following:

- Preparations and substances used for scientific or research purposes are classified in International Class 1.
- Preparations and substances used for medical or clinical purposes (used in actual treatment or diagnosis) are classified in International Class 5.
- Laboratory equipment (used for scientific or research purposes) is classified in International Class 9.
- Medical, surgical, dental, and veterinary equipment (used in actual treatment or diagnosis) is classified in International Class 10.
- With respect to kits or systems with goods from various classes, classification is in the class where a predominant number of the items in the kit or system are classified (these items should be listed first).

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

The requirement for clarification of the identification of goods is maintained and made FINAL.

Drawing Contains Color

It appears that the applicant wishes to claim color as a feature of the mark as the applicant has submitted a statement indicating in what colors the mark appears and where the colors appear in the mark. Nonetheless, as stated in the Office action mailed on July 18, 2002, the drawing of the mark must be in black-and-white only. The drawing of record shows color in the mark. Therefore, the applicant must submit a new special-form drawing showing the mark clearly and conforming to 37 C.F.R. Section 2.52. The requirements for a special#form drawing are as follows:

(1) The drawing must appear in black and white; no color is permitted.

(2) Every line and letter must be black and clear.

(3) The use of gray to indicate shading is unacceptable.

(4) The lining must not be too fine or too close together.

(5) The preferred size of the area in which the mark is displayed is 2½ inches (6.1 cm.) high and 2½ inches (6.1 cm.) wide. It should not be larger than 4 inches (10.3 cm.) high or 4 inches (10.3 cm.) wide.

(6) If the reduction of the mark to the required size renders any details illegible, the applicant may insert a statement in the application to describe the mark and these details.

37 C.F.R. §2.52; TMEP §§807.01(b) and 807.07(a). The Office will enforce these drawing requirements strictly.

The Office prefers that the drawing be depicted on a separate sheet of smooth, nonshiny, white paper 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long, and that the sheet contain a heading listing, on separate lines, the applicant's complete name; the applicant's address; the goods or services recited in the application; and, if the application is filed under Section 1(a) of the Act, the dates of first use of the mark and of first use of the mark in commerce; or, if the application is filed under Section 44(d), the priority filing date of the foreign application. 37 C.F.R. §2.52(b); TMEP §§807.01(a), 807.01(b), 807.01(c) and 807.07(a).

The requirement for an acceptable drawing is maintained and made FINAL.

Specimens

The application consists of four classes of goods; however, it appears that the applicant has submitted only two replacement specimens. The applicant must indicate for which two classes of goods these replacement specimens were submitted to show use of the mark. The applicant must also indicate the nature of the specimens (e.g., labels) because the nature is unclear from the application record. Examples of acceptable specimens are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging.

If the applicant determines that the two replacement specimens are not acceptable in form, the applicant must submit one specimen per class showing the mark as used in commerce in these two classes. 37 C.F.R. §2.56. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. §2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. §2.59(a); TMEP §904.09.

As to the remaining class of goods listed in the original application and the additional class of goods (International Class 9), the applicant must submit one specimen per class showing the mark as used in commerce. 37 C.F.R. §2.56. If the nature of the specimen is not clear upon review of the specimen, the applicant should indicate the nature of the specimen for the record. Again, examples of acceptable specimens are tags, labels, instruction manuals, containers or photographs that show the mark on the goods or packaging. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. §2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. §2.59(a); TMEP §904.09.

The requirement for specimens of use for all four classes is maintained and made FINAL.

Dates of Use for International Class 9

The applicant must submit the date of first use anywhere and the date of first use in commerce for the goods identified in International Class 9. The dates of use must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.34(a)(1) and 2.86(a). The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify the dates of use. 37 C.F.R. Sections 2.59(a) and 2.71(c).

The requirement for dates of use for International Class 9 is maintained and made FINAL.

Properly Worded Declaration

The following is a properly worded declaration under 37 C.F.R. §2.20. If a declaration under 37 C.F.R. §2.20 is required based on the amendments made to the application, the applicant should insert this declaration at the end of the response signed by a person authorized to sign under 37 C.F.R. §2.33(a).

> The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

_____

(Signature)

_____

(Print or Type Name and Position)

_____

(Date)

Proper Response to Final Action

Please note that the only appropriate responses to a final action are either (1) compliance with the outstanding requirements, if feasible, or (2) filing of an appeal to the Trademark Trial and Appeal Board. 37 C.F.R. §2.64(a). If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. §2.65(a).

/Alicia P. Collins/
Trademark Examining Attorney
Law Office 115

(703) 308-9115 ext. 486
(703) 872-9875 (fax)
ecom115@uspto.gov

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit **http://www.uspto.gov/teas/index.html** and follow the instructions.

To respond formally via E-mail, visit **http://www.uspto.gov/web/trademarks/tmelecresp.htm** and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at **http://tarr.uspto.gov/**

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at **http://www.uspto.gov/main/trademarks.htm**

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

SSM-494US

TRADEMARK

Please place on Upper Right Corner
of Response to Office Action ONLY.
Examining Attorney: COLLINS, ALICIA
Serial Number: 76/374498

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	**BIOTEST AND DESIGN**	:	Examining Attorney:
Serial No.:	76/374,498	:	Alicia Collins
Filed:	February 21, 2002	:	Law Office: 115
Applicant:	BIOTEST AG	:	

AMENDMENT

BOX RESPONSES No Fee

To The Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

S I R :

Responsive to the Office Action dated April 24, 2003, please amend the above-identified application as follows.

Applicant is pleased to submit herewith a new drawing, which shows the mark as a combination of the red triangle device with a red ball or circle at each of the vertices of the triangle device and the word BIOTEST in black letters.

Please delete the entire description of goods and substitute therefore the following:

In-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture

media, and dried media; buffers, salts, solvents; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes for tissue typing, germ or pathogen identification and blood group determination, International Class 1.

Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; narcotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines for medical uses; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic

preparations for clinical or medical purposes and laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic compounds and sanitary and hygiene monitoring; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefor for human and veterinary medical laboratory purposes; immunoassays such as ELISA's , consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefor for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof, International Class 5;

Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely, incubator, cell sorter, cell counter, shakers, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus namely, sample holder, reader, photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; agar strips, air samplers particle counters and anemometers for determination of air borne germs and for sanitary and hygiene monitoring, International Class 9;

Surgical, medical, dental and a veterinary instruments, apparatus and equipment for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; laboratory robot for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; agar strips, air samplers, particle counters and anemometers for determination of air borne germs and for determination of particle size and number in air; air samplers, sample holders and reader for clean room air monitoring; bottles and containers for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample-holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for (micro) determination, removal and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus namely sample holder, reader, photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; air sampler, agar strips and anemometer for determination of air borne germs and for sanitary and hygiene monitoring; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; in International Class 10.

Applicant is pleased to submit herewith two additional labels which are identical to the labels submitted with the previous amendment. All of the specimens are labels, which are affixed to packages of applicant's goods or to applicant's goods themselves as evidenced by the enclosed copies of applicants promotional literature concerning the goods and/or replications of the packages of the goods.

Applicant is pleased to submit herewith the Declaration of Dr. Wolf Vornahagen, Managing Director, which is also countersigned by Dr. Martin Reinecke, VIP Strategical Alliance on behalf of Applicant alleging use of the mark in commerce for the goods of Class 9.

REMARKS

Applicant respectfully submits it has complied with the outstanding requirements set forth in the Office Action, thus placing the application in condition for publication.

Applicant further submits this is a proper response to a Final Action and thus the application is now in condition for publication.

Respectfully submitted,

James C. Simmons
Attorney for Applicant

JCS/mc

Date: October 15, 2003

RatnerPrestia
Suite 301
One Westlakes, Berwyn
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

The Assistant Commissioner for Trademarks is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on:

Date: 10/15/2003

Applicant: **BIOTEST AG**
(A German Corporation)

P. O. Address: **Waldfriedstrasse 4**
60528 Frankfurt/Main Germany

Date of First Use: **July 2, 1977**

In-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes for tissue typing, germ or pathogen identification and blood group determination, International Class 1.

Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin

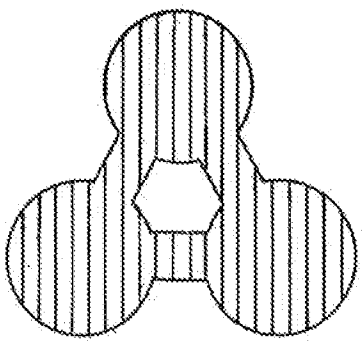
preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; narcotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines for medical uses; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic preparations for clinical or medical purposes and laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic compounds and sanitary and hygiene monitoring; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefor for human and veterinary medical laboratory purposes; immunoassays such as ELISA's , consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and

microtiter plates, and reagents therefor for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof, International Class 5;

Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely, incubator, cell sorter, cell counter, shakers, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus namely, sample holder, reader, photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; agar strips, air samplers particle counters and anemometers for determination of air borne germs and for sanitary and hygiene monitoring, International Class 9;

Surgical, medical, dental and a veterinary instruments, apparatus and equipment for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; laboratory robot for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; agar strips, air samplers, particle counters and anemometers for determination of air borne germs and for determination of particle size and number in air; air samplers, sample holders and reader for clean room air monitoring; bottles and containers for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems; blood warmers; apparatus for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample-holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for (micro) determination, removal and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus namely sample holder, reader,

photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; air sampler, agar strips and anemometer for determination of air borne germs and for sanitary and hygiene monitoring; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; in International Class 10.



Biotest

SSM-494US

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	**BIOTEST AND DESIGN**	:	Examining Attorney:
Serial No.:	76/374,498	:	Alicia Collins
Filed:	February 21, 2002	:	Law Office: 115
Applicant:	BIOTEST AG	:	

DECLARATION

To The Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

S I R :

Declaration of Dr. Rolf Vornhagen

1. Dr. Rolf Vornhagen states that he is the Managing Director of Biotest AG a German Corporation having a business address of Waldfriedstrasse 4 60528 Frankfurt/Main, Germany.

2. That Biotest AG is the Applicant for the above-identified Trademark Application.

3. That Biotest AG has used the Trademark consisting of the word Biotest and Design set out in the above-identified Application at least as early as July 2, 1977 and in commerce between Germany and the United States since October 5, 1977 for the goods identified in Class 9.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Under the laws of Germany, the position of the individual signing is equivalent to that of an officer of a United States Corporation.

BIOTEST AG

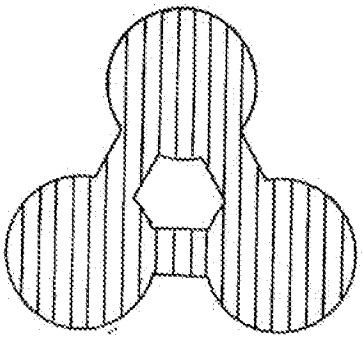
By: 
Signature

Dr. Martin Reinecke
VIP Strategic Alliances

Dr. Rolf Vornhagen
Managing Director

Print or Type Name and Title

Date: 23rd September 2003



Biotest

Ein Vollautomat für die *gesamte* Blutgruppen-Serologie

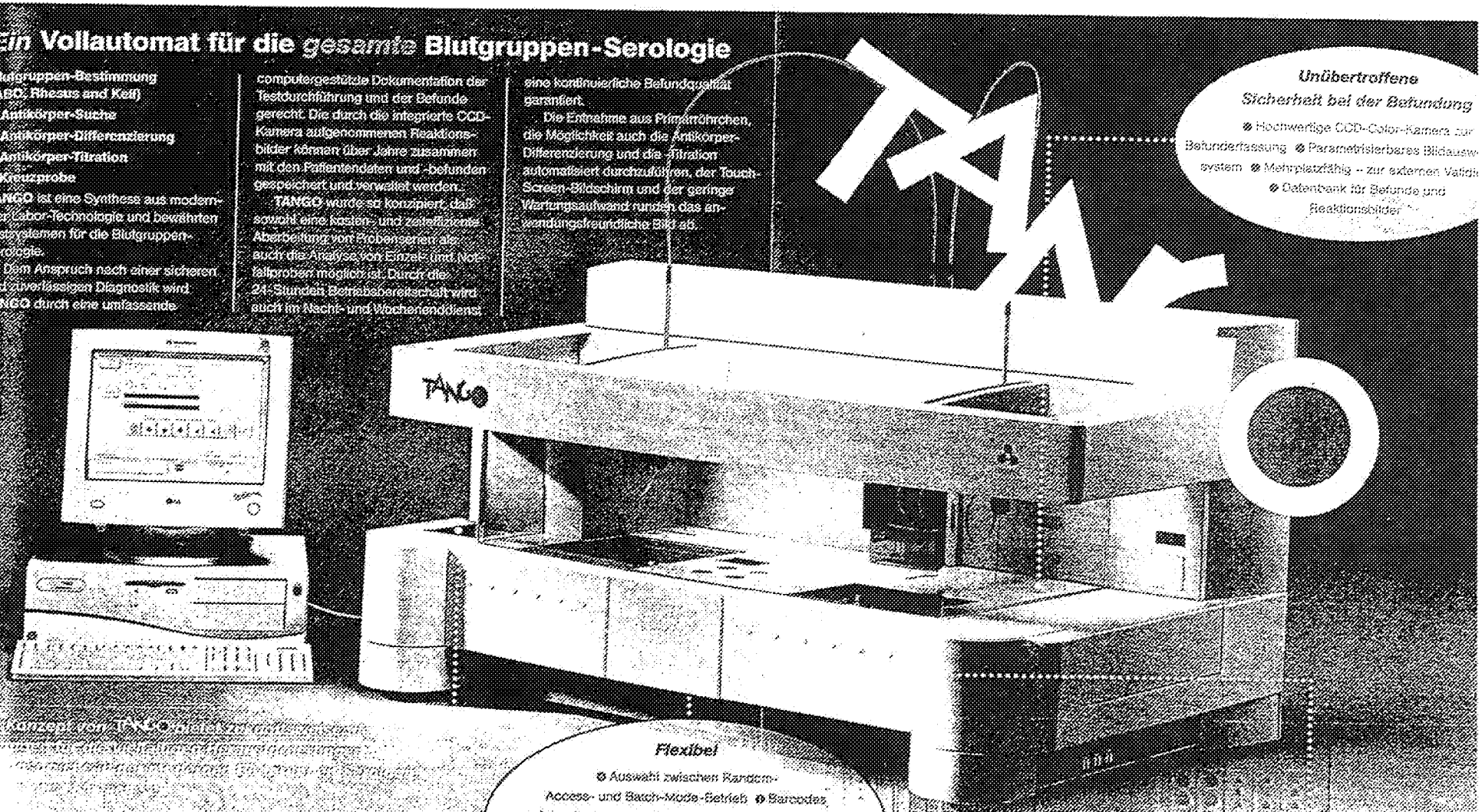
Blutgruppen-Bestimmung (ABO; Rhesus und Kell)
- **Antikörper-Suche**
- **Antikörper-Differenzierung**
- **Antikörper-Titration**
- **Kreuzprobe**

TANGO ist eine Synthese aus modernster Labor-Technologie und bewährten Testsystemen für die Blutgruppen-Serologie.

Dem Anspruch nach einer sicheren und zuverlässigen Diagnostik wird **TANGO** durch eine umfassende computergestützte Dokumentation der Testdurchführung und der Befunde gerecht. Die durch die integrierte CCD-Kamera aufgenommenen Reaktionsbilder können über Jahre zusammen mit den Patientendaten und -befunden gespeichert und verwaltet werden.

TANGO wurde so konzipiert, daß sowohl eine kosten- und zeiteffiziente Abarbeitung von Probenseren als auch die Analyse von Einzel- und Notfallproben möglich ist. Durch die 24-Stunden Betriebsbereitschaft wird auch im Nacht- und Wochenenddienst eine kontinuierliche Befundqualität garantiert.

Die Entnahme aus Primärröhrchen, die Möglichkeit auch die Antikörper-Differenzierung und die -Titration automatisiert durchzuführen, der Touch-Screen-Bildschirm und der geringe Wartungsaufwand runden das anwendungsfreundliche Bild ab.



Unübertroffene Sicherheit bei der Befundung

⊗ Hochwertige CCD-Color-Kamera zur Befunderfassung ⊗ Parametrisierbares Bildauswertesystem ⊗ Mehrplatzfähig – zur externen Validierung ⊗ Datenbank für Befunde und Reaktionsbilder

Flexibel

⊗ Auswahl zwischen Random-Access- und Batch-Mode-Betrieb ⊗ Barcodes auf den Probenracks definieren das gewünschte Testprofil – z.B. Notfallproben, pädiatrische Proben, Kreuzproben ⊗ Echte positive Probenidentifikation ⊗ Load and walk away – Beladungskapazität von 120 Proben

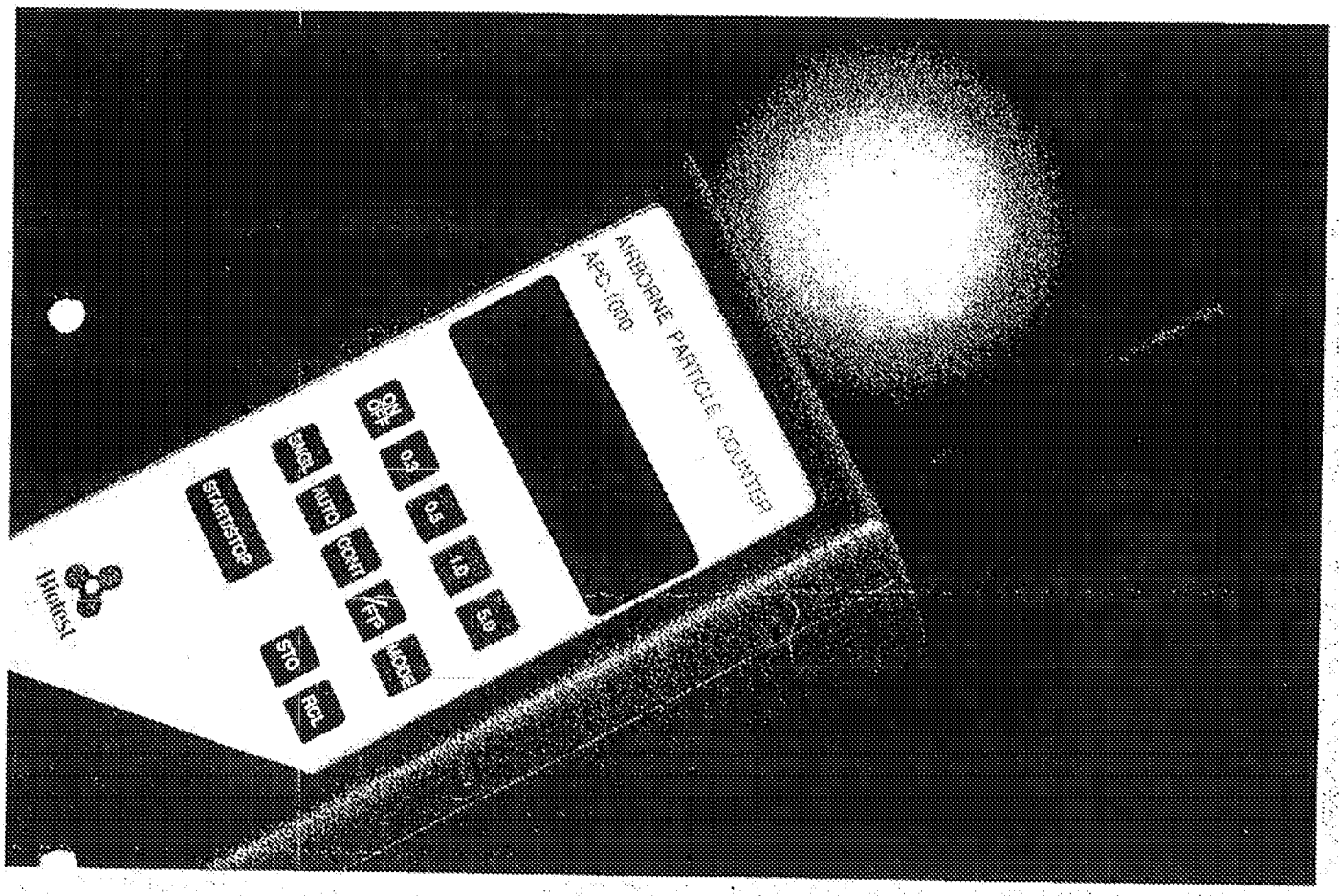
Optimierte Testsysteme

⊗ Erytype (Blutgruppen-Bestimmung) und Solidscreen II (Antikörper-Diagnostik) – anerkannt, sensitiv und standardisiert ⊗ Einsatz von Einzelstreifen – wirtschaftlich sinnvoll auch für Kleinserien und Einzelproben ⊗ Barcodes auf den einzelnen Streifen – positive Identifizierung des verwendeten Testsystems und Inprocess-Kontrolle im gesamten Gerät

24 Stunden einsatzbereit

⊗ Gekühlte Reagenzienpositionen und schonende Suspension der Testzellen ⊗ Positive Reagenzienidentifikation ⊗ Software-gestützte Volumen- und Laufzeitkontrolle der Reagenzien

Biotest HYCON



APC 1000

Das Leichtgewicht unter den Partikelzählern

1. Einzelteile und Funktionen

1. Individual Parts and Functions

⑯ Empfänger für Infrarot-Fernbedienung

⑰ Batteriefach

⑱ Verschlußklappe für Batteriefach

⑲ Schutzschraube zum Gewinde für Stativ

⑳ Magnetkupplung

㉑ Bajonett zur Arretierung der Schutzkappe

㉒ Luftauslaßschlitze des Rotors

㉓ Rändelschraube

㉔ Rotormantel

㉕ Lüfterflügel

㉖ Luftleitzylinder

㉗ Magnet

㉘ Lüfterwelle

㉙ Öffner Batteriegehäuse

⑯ Sensor for infra-red remote control

⑰ Battery compartment

⑱ Cover for battery compartment

⑲ Protective screw for tripod mounting thread

⑳ Magnetic coupling

㉑ Bayonet lock for the protection cap

㉒ Rotor air outlet slit

㉓ Knurled nut

㉔ Rotor housing

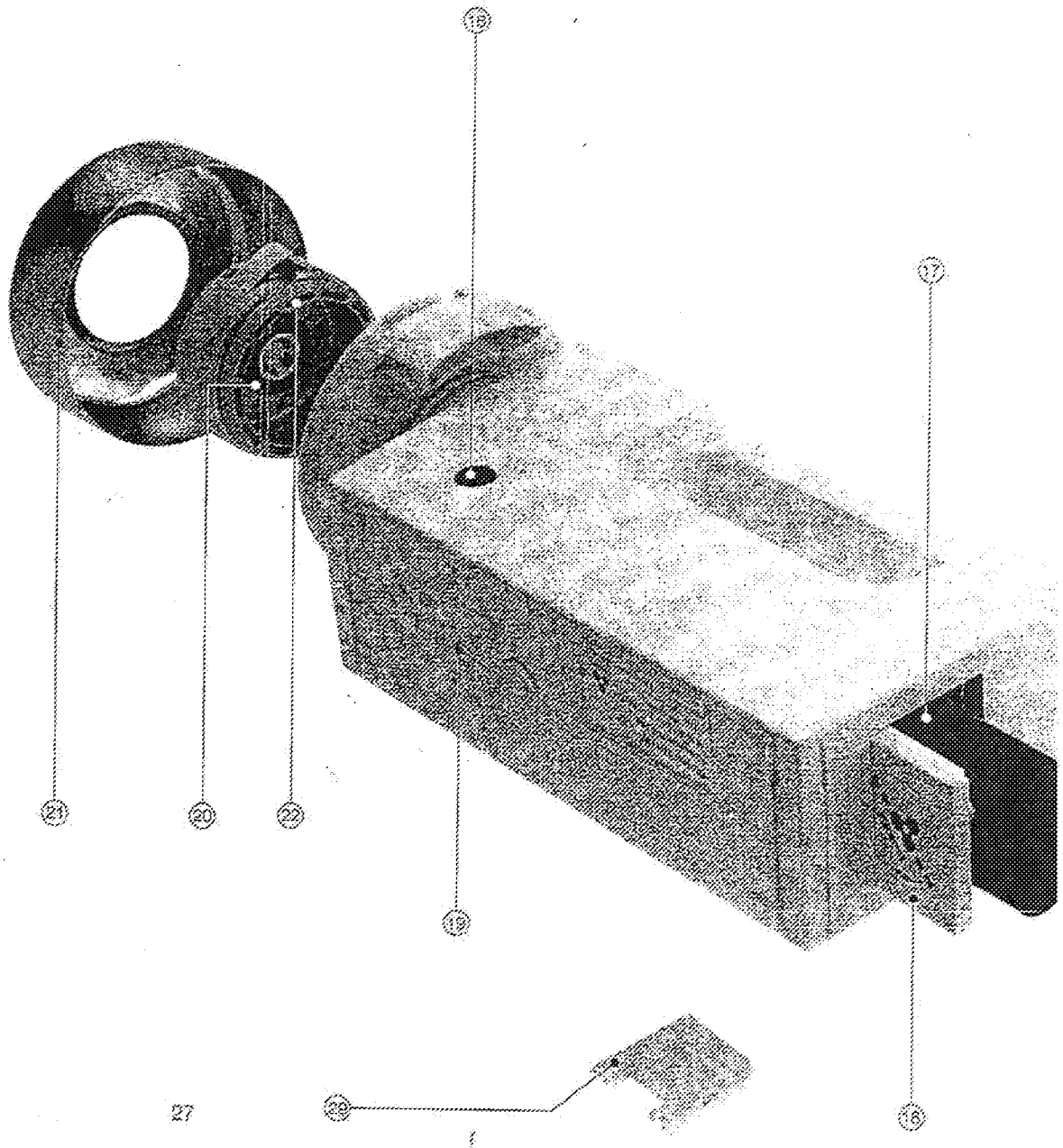
㉕ Fan blades

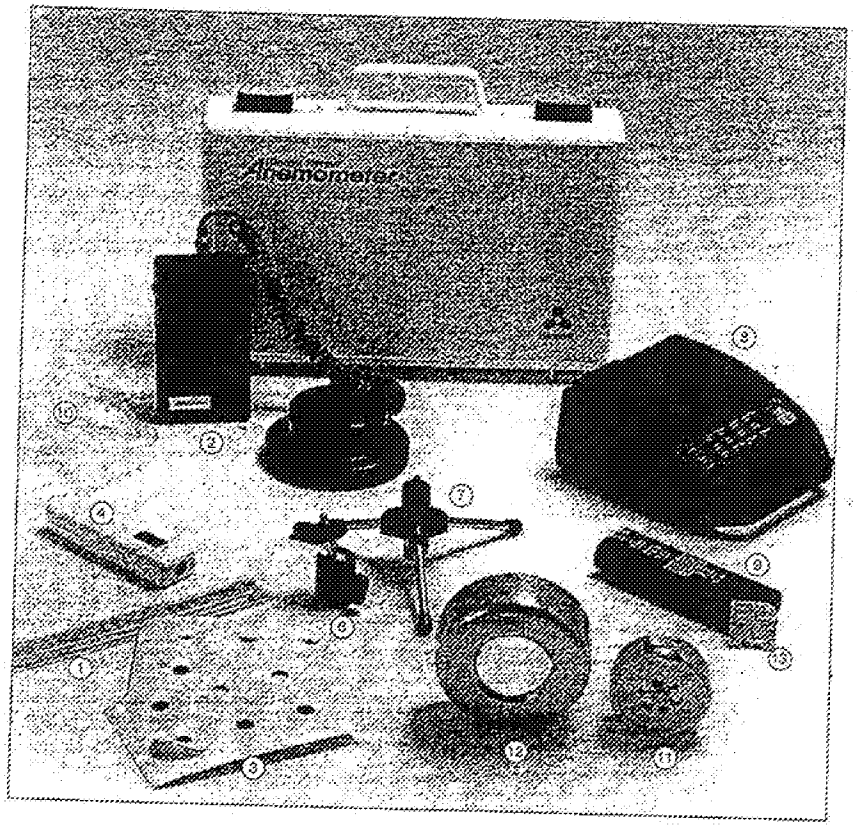
㉖ Air direction cylinder

㉗ Magnet

㉘ Fan spindle

㉙ Battery compartment opener





8. Accessories

The wide range of accessories available for the Biotest RCS Plus Air Sampler makes operation of the instrument even more convenient.

Agar strips

1.1. **Agar strips TC**
(Article Number 941 100); Tryptic soy agar for determination of total airborne microbial counts.

1.2. **Agar strips TC-γ**
(Article Number 941 110); γ-irradiated Tryptic soy agar in a twin pack for determination of total airborne microbial counts in sterile areas.

1.3. **Agar strips YM**
(Article Number 941 200); Rose-Bengal agar for the detection of yeasts and moulds.

1.4. **Agar strips S**
(Article Number 941 400); Mannitol-salt agar for the determination of staphylococci.

1.5. **Agar strips C**
(Article Number 941 500); MacConkey agar for the detection of coliform bacteria.

1.6. **Agar strips Penase**
(Article Number 941 700); Tryptic soy agar with penase for the determination of total airborne microbial counts in air containing penicillin.

1.7. **Sterile empty strips.**
(Article Number 941 600) for self production of culture medium for special applications.

The culture media are formulated in accordance with international standards. The agar strips are produced under standardized conditions, thus enabling reproducible results to be obtained. Each package contains a quality control certificate for the individual batch.

RCS Plus Anemometer
(Article Number 940 320); portable air flow-rate measurement device for calibrating the RCS Plus Air Sampler.

Adhesive tapes
(Article Number 940 325) for calibrating the Biotest RCS Plus Air Sampler; adhesive tapes for complete sealing of the air inlet apertures on the rotor.

Infra-red remote control
(Article Number 940 341) for convenient operation of the Biotest RCS Plus Air Sampler, eg. – in conjunction with the tripod.

Tripod
(Article Number 940 330) – not shown.

Tripod adapter
(Article Number 940 331) for standard RCS tripod (Article Number 940 030).

Table-top Tripod
(Article Number 940 336) for horizontal operation of the Biotest RCS Plus Air Sampler on very smooth surfaces to minimize vibrations.

Battery recharger
(Article Number 940 370 - 230V / 940 371 - 110V) for rapid charging of the battery pack / P 7.2.

Battery pack P7.2
(Article Number 940 375) 7.2 V spare rechargeable battery for uninterrupted operation of the Biotest RCS Plus Air Sampler.

Sterile sleeves
(Article Number 940 350; pack of 10) for covering the Biotest RCS Plus Air Sampler to protect the instrument against transmission of contaminants.

Rotor, complete
(Article Number 940 411); autoclavable spare rotor.

Protection cap
(Article Number 940 415); autoclavable spare protection cap.

Battery compartment opener
(Article Number 940 450).

9. Technical Data

Sampling principle: The Biotest RCS Plus Air Sampler operates on the principle of impaction, whereby the air stream enters the rotor at the front of the instrument and the airborne microbes are separated onto the agar strip by centrifugal force.

Measurement range: 1–1999 liters (recommended measurement range 10–1000 liters)

Air flow-rate: approx. 50 l/min

Instrument precision: ± 5%

Sample volume: – 7 volumes in memory in ascending order of 10, 20, 50, 100, 200, 500 and 1000 liters – 3 positions in memory, individual selectable from 1 to 1999 liters. The accuracy of sampling volume is achieved through calibration.

Rotor speed: approx. 6100 rpm

Maximum allowable axial force on rotor shaft: 30 Newtons

Power supply: Rapid charging 7.2 V nickel cadmium ba (charging time 1 hour)

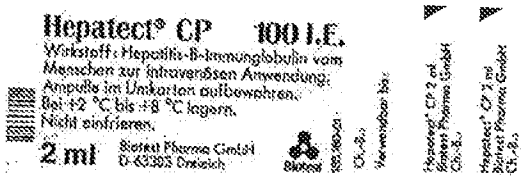
Automatic power-off: The instrument switches itself automatically after 5 minutes

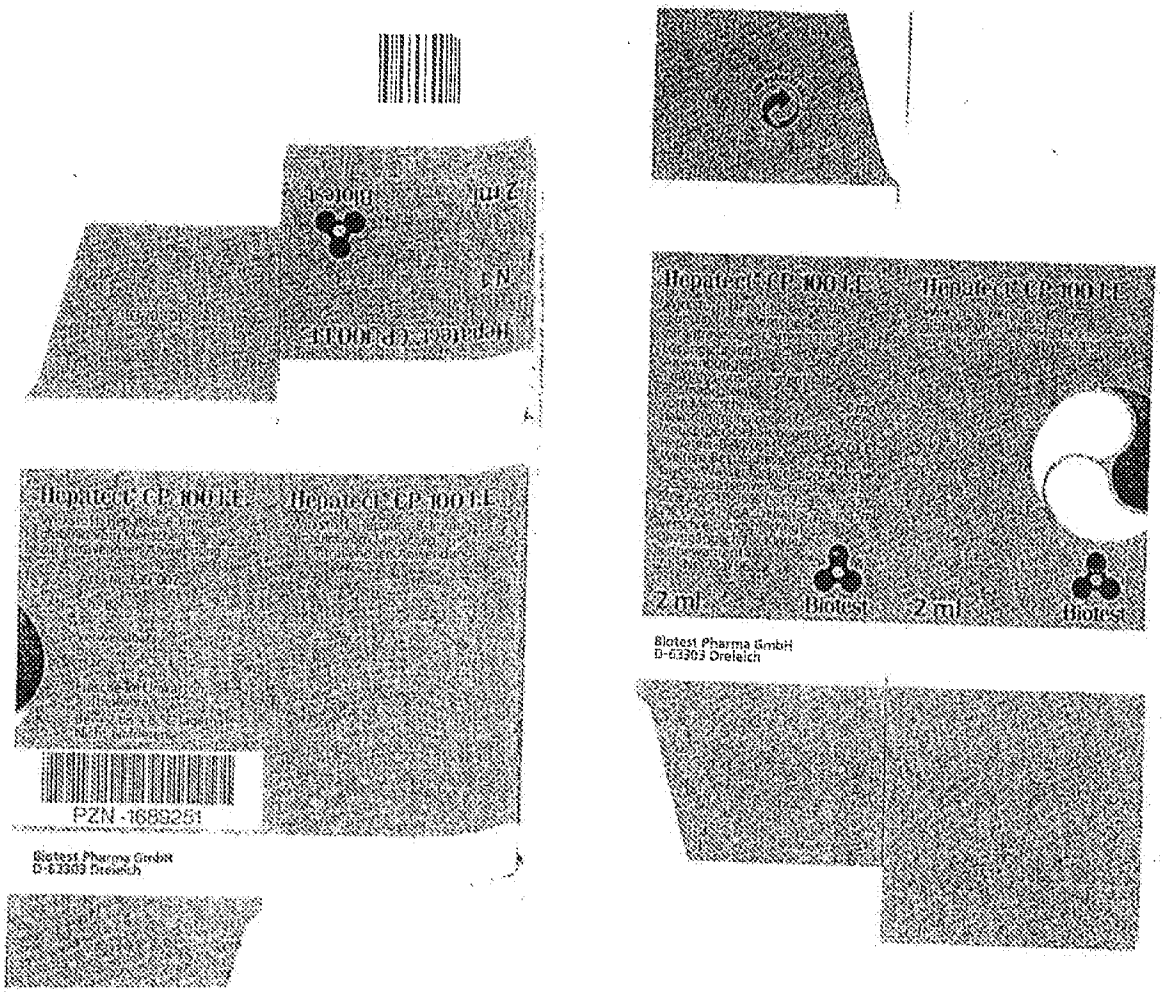
Materials:
- **Housing:** polycarbonate; resistant to 70% ethanol
- **Rotor:** anodized aluminium; autoclavable
- **Protection cap:** stainless steel; autoclavable

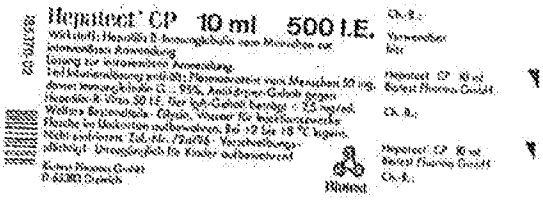
Weight: approx. 1500 g with battery pack (3.3 lbs)

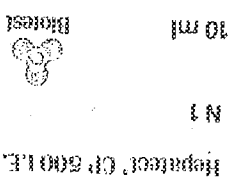
Miscellaneous:
- Operation via keyboard panel with integrated display
- Thread connection for tripod
- Infra-red remote control sensor
- Can be calibrated using the Biotest Anemometer (traceable to PTB, Physikalisch Technische Bundesans
- Errors indicated via display and acoustic signal
- Memory function for residual sampling volume and t sampling volume processed

As part of its continous product improvement, Biotest reserves the right to amend technical specifications without prior notice.


Hepatect® CP 100 I.E.
Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen zur intravenösen Anwendung.
Ampulle im Umkarton aufbewahren.
Bei +2 °C bis +8 °C lagern.
Nicht einfrieren.
2 ml
Biotest Pharma GmbH
D-63303 Dreieich
Biotest
Hepatect® CP 2 ml
Biotest Pharma GmbH
Ch.-B.:
Hepatect® CP 2 ml
Biotest Pharma GmbH
Ch.-B.:


Hepatect® CP 100 I.E.
2 ml
Biotest
PZN-1689251
Biotest Pharma GmbH
D-63303 Dreieich

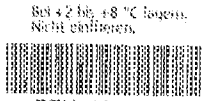




183.088-02

Hepatect® CP 500 I.E.
Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen
zur intravenösen Anwendung

Art.-Nr. 639 100
Ch.-B.:
verwendbar bis:
Flasche im Umkarton aufbewahren.
Bei +2 bis +8 °C lagern.
Nicht einfrieren.



Biotest Pharma GmbH
D-63303 Dreieich

Hepatect® CP 500 I.E.
Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen
zur intravenösen Anwendung

Hepatect® CP 500 I.E.
Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen
zur intravenösen Anwendung

Lösung zur intravenösen Anwendung
Arzneilösung
1 ml Infusionslösung enthält:
Plasmaproteine vom Menschen
davon Immunglobuline G: 50 mg
Antikörper gegen Hepatitis-B-Virus: > 95%
Weitere Bestandteile: Glycin, Wasser für Injektionszwecke
IgG Subklassenverteilung: 69% (IgG1), 26% (IgG2), 3% (IgG3), 2% (IgG4), IgA-Gehalt ≤ 2,5 mg/ml
Verschreibungspflichtig!
Unzugänglich für Kinder aufbewahren!
Zul.-Nr. 72a/96
10 ml
Biotest

Hepatect® CP 500 I.E.
Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen
zur intravenösen Anwendung

10 ml
Biotest

Biotest Pharma GmbH
D-63303 Dreieich

Hepatect® CP 2000 I.E.

40 ml

Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen
zur intravenösen Anwendung
Lösung zur intravenösen Anwendung

Ch.-B.:

1 ml Infusionslösung enthält:

Plasmaprotein vom Menschen	50 mg
davon Immunglobulin G	>95%
Antikörper-Gehalt gegen Hepatitis-B-Virus	50 I.E.

Der IgA-Gehalt beträgt ≤ 2,5 mg/ml.

Weitere Bestandteile:
Glycin, Wasser für Injektionszwecke

Flasche im Umkarton aufbewahren.
Bei +2 bis +8 °C lagern.
Nicht einfrieren.

Verschreibungspflichtig!

Unzugänglich für Kinder aufbewahren!

Zul.-Nr. 72a/96

Verwendbar bis:

185.133-02

PZN-1239714

10 x Art. Nr. 639 040

Biotest Pharma GmbH
D-63303 Dreieich

Biotest

Hepatect® CP 40 ml

Wirkstoff: Hepatitis-B-Immunglobulin vom Menschen zur intravenösen Anwendung Lösung zur intravenösen Anwendung. 1 ml Infusionslösung enthält: Plasmaprotein vom Menschen 50 mg, davon Immunglobulin G > 95%, Antikörper-Gehalt gegen Hepatitis-B-Virus 50 I.E. Der IgA-Gehalt beträgt ≤ 2,5 mg/ml.

Biotest Pharma GmbH
D-63303 Dreieich

2000 I.E.

Weitere Bestandteile: Glycin, Wasser für Injektionszwecke. Flasche im Umkarton aufbewahren. Bei +2 bis +8 °C lagern. Nicht einfrieren. Verschreibungspflichtig! Unzugänglich für Kinder aufbewahren! Zul.-Nr. 72a/96

185.133-02

Ch.-B.:

Verwendbar bis:

Hepatect® CP 40 ml Biotest Pharma GmbH Ch.-B.:

Hepatect® CP 40 ml Biotest Pharma GmbH Ch.-B.:

Biotest

Hepatect® CP 2000 I.E.

Wirkstoff:
Hepatitis-B-Immunglobulin
vom Menschen zur intravenösen
Anwendung

Lösung zur intravenösen Anwendung
1 ml Infusionslösung enthält:

Plasmaprotein vom Menschen	50 mg
davon Immunglobulin G	≥ 95%
Antikörper-Gehalt gegen Hepatitis-B-Virus	50 I.E.

Weitere Bestandteile:
Glycin, Wasser für Injektionszwecke
IgG Subklassenverteilung:
59% (IgG1), 36% (IgG2), 3% (IgG3), 2% (IgG4), IgA-Gehalt ≤ 2,5 mg/ml
Verschreibungspflichtig!
Unzugänglich für Kinder aufbewahren!
Zul.-Nr. 72a/96

40 ml Biotest

Biotest Pharma GmbH
D-63303 Dreieich

Hepatect® CP 2000 I.E.

Wirkstoff:
Hepatitis-B-Immunglobulin
vom Menschen zur intravenösen
Anwendung

40 ml Biotest

40 ml Biotest

N 1

183.675-03

Hepatect® CP 2000 I.E.

Hepatect® CP 2000 I.E.

Wirkstoff:
Hepatitis-B-Immunglobulin
vom Menschen zur intravenösen
Anwendung

Art.-Nr. 639 040
Ch.-B.:

verwendbar
bis:

Flasche im Umkarton
aufbewahren.

Bei +2 bis +8 °C lagern.
Nicht einfrieren.

PZN -1239714


Biotest


Biotest

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/374498

APPLICANT: BIOTEST AG

CORRESPONDENT ADDRESS:
JAMES C. SIMMONS
RATNER & PRESTIA
ONE WESTLAKES, BERWYN STE 301
P.O. BOX 980
VALLEY FORGE, PENNSYLVANIA 19482-0980

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom115@uspto.gov

MARK: BIOTEST

CORRESPONDENT'S REFERENCE/DOCKET NO: SSM-494US

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/374498 – BIOTEST and Design

This letter responds to the applicant's communication filed on October 20, 2003. The examining attorney has carefully reviewed the applicant's arguments and amendments in favor of registration and has determined the following.

Lining Statement

The new drawing appears to be lined for color. The applicant must include a statement that the mark is lined for the color red. 37 C.F.R. §§2.37 and 2.52(a)(2)(v); TMEP §807.09(b).

Identification and Classification of Goods

The identification of goods remains unacceptable as indefinite and includes goods which have been incorrectly classified. TMEP section 1402.01. The applicant must amend the identification to clarify the exact nature of the goods and to classify the goods correctly. The applicant must also delete all parentheses in the identification. Items that have been incorrectly classified are shown below with a "strikethrough" and should be deleted where shown.

The applicant is reminded that only instruments, apparatus, and equipment which are used in the *actual treatment or diagnosis of patients* are classified in International Class 10. For instance, the applicant has classified "air sampler, agar strips and anemometer for determination of air borne germs and for sanitary and hygiene monitoring" in International Class 10. As these goods are not used in the actual treatment or diagnosis of patients, they should not be classified in International Class 10.

The applicant may adopt the following identification, if accurate:

> In-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents **[MUST indicate use, e.g., for scientific and research purposes]**; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; plates and multiwell plates (microtiter plates), especially for cell typing, blood and virus diagnostics; DNA probes for tissue typing, germ or pathogen identification and blood group determination, in INT. CLASS 1;
>
> Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; narcotics **for use in the treatment of [MUST specify disease, illness and/or condition goods used to treat]**; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment **of** digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, antiallergic, hyposensitizing and detoxifying medicines for medical uses for **[MUST indicate specific use for hyposensitizing and detoxifying medicines]**; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic preparations for clinical or medical purposes and **[MUST specify use, e.g., clinical or medical]** laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, **and** determination of toxic compounds and sanitary and hygiene monitoring; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody

determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefor for human and veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefor for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof, in INT. CLASS 5;

Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus, namely, incubator, cell sorter, cell counter, shakers, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus, namely, sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying **kits/systems comprising** sample holder, reader, photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, **namely,** blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; **kits/systems comprising** air samplers, particle counters, anemometers, **and agar strips** for determination of air borne germs and for sanitary and hygiene monitoring; **laboratory robot for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; kits/systems comprising air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in [MUST specify nature of use, e.g., scientific, research] laboratories,** in INT. CLASS 9;

Medical apparatus for clinical or diagnostic use, namely, apparatus for serological blood typing, blood grouping or serological detection of blood groups; laboratory robot for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; agar strips, air samplers, particle counters and anemometers for determination of air borne germs and for determination of particle size and number in air; air samplers, sample holders and reader for clean room air monitoring; bottles and containers **specially designed** for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely, containers, syringes, catheters, transdermal delivery systems **comprised of [MUST specify primary components of systems];** blood warmers **[MUST indicate use, e.g., for clinical or diagnostic];** apparatus for cell recovery and for handling of cells, including disposable materials, **namely, [MUST specify goods by common commercial name] for [MUST indicate use, e.g., clinical or diagnostic use];** measuring and surveying apparatus namely sample-holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for (micro) determination, removal and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying apparatus **[MUST indicate use, e.g., for clinical or diagnostic use],** namely, sample holder, reader, photometer, dipsticks, test strips, and agar strips for determination and quantification of substances, **namely,** blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; air sampler, agar strips and anemometer for determination of air borne germs and for sanitary and hygiene monitoring; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics **[MUST indicate use, e.g., for clinical or diagnostic use],** in INT. CLASS 10.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(a); TMEP section 1402.06. Therefore, the applicant may not amend to include

any goods that are not within the scope of goods set forth in the present identification.

The FINAL requirement for clarification of the identification and classification of goods is maintained and continued.

Telephone for Assistance
If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Alicia P. Collins/
Trademark Examining Attorney
Law Office 115
(703) 308-9115 ext. 486
(703) 872-9217 (fax)
ecom115@uspto.gov

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit **http://www.uspto.gov/teas/index.html** and follow the instructions.

To respond formally via E-mail, visit **http://www.uspto.gov/web/trademarks/tmelecresp.htm** and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at **http://tarr.uspto.gov/**

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at **http://www.uspto.gov/main/trademarks.htm**

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Please place on Upper Right Corner
of Response to Office Action ONLY.

Examining Attorney: COLLINS, ALICIA
Serial Number: 76/374498

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark:	**BIOTEST AND DESIGN**	:	Examining Attorney:
Serial No.:	76/374,498	:	Alicia Collins
Filed:	February 21, 2002	:	Law Office: 115
Applicant:	BIOTEST AG	:	

AMENDMENT

To The Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

S I R :

In response to the Office Action dated February 9, 2004, please amend the above-identified application as follows.

Please delete the entire description of goods and substitute therefore the following:

Class 1: in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monocional and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents for research and scientific purposes; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs

for scientific and research purposes comprising nutrient media, buffers and salts; DNA probes for tissue typing, germ or pathogen identification and blood group determination, International Class 1.

Class 5: Pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, and antiallergic medicines; dermatological, ophtalmological and otological medicines; in-vivo and

in-vitro diagnostic preparations for clinical or medical purposes and clinical or medical laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, and determination of toxic compounds; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human and veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof, International Class 5;

Class 9: Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems comprising sample holder, reader, photometer, dipsticks, teststrips,

and agar strips for determination and quantification of substances, namely blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for sanitary and hygiene monitoring, laboratory robot, for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agarstrips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all foregoing for use in research and/or scientific laboratories and in manufacturing facilities for food, fodder, beverages, pharmaceuticals, cosmetics or in surgeries, International Class 9;

Class 10: Medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems comprising plasma and blood warmers for clinical use; apparatus for cell recovery and for handling of cells, including disposable materials namely plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; measuring and surveying apparatus for clinical and diagnostic use namely sample holder, reader, photometer, dipsticks, teststrips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics for clinical and diagnostic use; in International Class 10.

Where appropriate insert the following into the application:

"Color is a feature of the mark."
"The mark is lined for the color red."

REMARKS

Applicant has amended the application to adopt the suggested description of goods set forth by the Examiner. While certain medicines have been dropped there have been no additions or expansions of the goods for which registration is sought.

Applicant has amended the application to include the fact that color is the feature of the mark and the drawing is lined for the color red.

In view of the foregoing it is respectfully submitted that the above-identified application is in condition for publication and a notice to that effect is earnestly solicited.

Respectfully submitted,

James C. Simmons
Attorney for Applicant

JCS/mc

Date: May 5, 2004

RatnerPrestia
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

The Assistant Commissioner for Trademarks is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on.

Date: 5 May 2004

James C. Simmons

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/374498

APPLICANT: BIOTEST AG

76374498

CORRESPONDENT ADDRESS:
JAMES C. SIMMONS
RATNER & PRESTIA
ONE WESTLAKES, BERWYN STE 301
P.O. BOX 980
VALLEY FORGE, PENNSYLVANIA 19482-0980

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: BIOTEST

CORRESPONDENT'S REFERENCE/DOCKET NO: SSM-494US

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

Serial Number 76/374498 -- BIOTEST and Design

EXAMINER'S AMENDMENT

In accordance with the authorization granted by James C. Simmons on August 24, 2004, the application has been AMENDED as indicated below. Please note that if the identification of goods or services has been amended below, any future amendments must be in accordance with 37 C.F.R. 2.71(a); TMEP section 1402.07(e). No response is necessary unless there is an objection to the amendment. If there is an objection to the amendment, the applicant should notify the examining attorney immediately.

Identification of Goods (International Classes 9 & 10 Only)
The identification of goods for International Classes 9 and 10 is amended to read as follows (amendments shown in underlined type):

Plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for sanitary and hygiene monitoring, laboratory robot, for automated processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in research and/or non-medical laboratories, in INT. CLASS 9;

Medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems comprising blood warmers and plasma for clinical use; apparatus for cell recovery and for handling of cells, including disposable materials namely plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; measuring and surveying apparatus for clinical and diagnostic use namely sample holder, reader, photometer, dipsticks, teststrips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics for clinical and diagnostic use; all of the foregoing for medical, clinical, diagnostic and/or surgical use, in INT. CLASS 10.

New Telephone Number

To reach the undersigned attorney by telephone after October 21, 2004, please call (571) 272 - 9147. Thank you.

/Alicia P. Collins/

Trademark Examining Attorney

Law Office 115

(703) 308-9115 ext. 486

(703) 872-9217 (fax)

Side - 1

NOTICE OF PUBLICATION UNDER §12(a)
MAILING DATE: Mar 2, 2005
PUBLICATION DATE: Mar 22, 2005

The mark identified below will be published in the Official Gazette on Mar 22, 2005. Any party who believes they will be damaged by registration of the mark may oppose its registration by filing an opposition to registration or a request to extend the time to oppose within thirty (30) days from the publication date on this notice. If no opposition is filed within the time specified by law, the USPTO may issue a Certificate of Registration.

To view the Official Gazette online or to order a paper copy, visit the USPTO website at http://www.uspto.gov/web/trademarks/tmog/ any time within the five-week period after the date of publication. You may also order a printed version from the U.S. Government Printing Office (GPO) at http://bookstore.gpo.gov or 202-512-1800. To check the status of your application, go to http://tarr.uspto.gov/.

SERIAL NUMBER: 76374498
MARK: BIOTEST

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL
U.S POSTAGE
PAID

JAMES C SIMMONS
RATNER & PRESTIA
ONE WESTLAKES, BERWYN STE 301
P O BOX 980
VALLEY FORGE, PA 19482-0980

Int. Cls.: 1, 5, 9 and 10

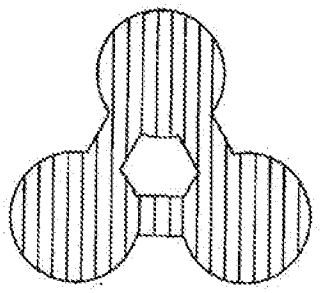
Prior U.S. Cls.: 1, 5, 6, 10, 18, 21, 23, 26, 36, 38, 39, 44, 46, 51 and 52

Reg. No. 2,961,650

United States Patent and Trademark Office

Registered June 14, 2005

TRADEMARK
PRINCIPAL REGISTER



Biotest

BIOTEST AG (FED REP GERMANY CORPORATION)

WALDPRIEDSTRASSE 4

60528 FRANKFURT/MAIN, FED REP GERMANY

FOR: IN-VITRO DIAGNOSTIC PREPARATIONS FOR SCIENTIFIC PURPOSES; TEST KITS COMPRISING REAGENTS, SERA, MONOCLONAL AND POLYCLONAL ANTIBODIES, NATURAL AND RECOMBINANT ANTIGENS, AND MICROTITER PLATES, AND REAGENTS FOR SCIENTIFIC AND RESEARCH PURPOSES; SYSTEMS FOR DETERMINING RESISTANCE FOR SCIENTIFIC PURPOSES COMPRISING NUTRIENT MEDIA, CELL CULTURE MEDIA, AND DRIED MEDIA; BUFFERS, SALTS, SOLVENTS FOR RESEARCH AND SCIENTIFIC PURPOSES; TEST KITS COMPRISING BUFFERS, SALTS, SOLVENTS AND REAGENTS FOR INDUSTRIAL AND SCIENTIFIC PURPOSES FOR HYGIENE MONITORING ON SURFACES, IN AIR AND LIQUIDS, AND SYSTEMS FOR IDENTIFICATION OF GERMS FOR SCIENTIFIC AND RESEARCH PURPOSES COMPRISING NUTRIENT MEDIA, BUFFERS AND SALTS; DNA PROBES FOR TISSUE TYPING, GERM OR PATHOGEN IDENTIFICATION AND BLOOD GROUP DETERMINATION, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 7-2-1977; IN COMMERCE 10-5-1997.

FOR: PHARMACEUTICAL AND VETERINARY PREPARATIONS AND PRODUCTS FOR TREATING IMMUNE INSUFFICIENCIES, ESPECIALLY AUTOIMMUNE INSUFFICIENCIES, CANCER, VIRUS INFECTIONS, CONDITIONS OF VIRUS REACTIVATION, ANEMIA, PROTEIN ANEMIA, IMMUNE GLOBULIN ANEMIA, BLOOD COAGULATION DISORDERS, AND DEFICIENCIES IN BLOOD COAGULATION FACTORS, OR FOR PREVENTING REJECTIONS IN TRANSPLANTATION MEDICINE; FOOD FOR BABIES; MEDICAL PLASTERS; MATERIALS FOR WOUND, BURN OR SURGICAL DRESSING; PHARMACEUTICAL PREPARATIONS FOR HEMATOLOGY, ONCOLOGY, TRANSPLANTATION MEDICINE, NEPHROLOGY, PEDIATRICS, FOR INTENSIVE CARE MEDICINE NAMELY BLOOD PRODUCTS, IMMUNE GLOBULIN PREPARATIONS, GLOBULIN PREPARATIONS, COAGULATION FACTORS; MEDICINES FOR USE IN TRANSPLANTATION PROCEDURES AND FOR INFLUENCING BLOOD COAGULATION; IMMUNE GLOBULIN PREPARATIONS FOR TREATING IMMUNE INSUFFICIENCIES, ESPECIALLY AUTOIMMUNE INSUFFICIENCIES, CANCER, VIRUS INFECTIONS, CONDITIONS OF VIRUS REACTIVATION, ANEMIA, PROTEIN ANEMIA, IMMUNE GLOBULIN ANEMIA, BLOOD COAGULATION DISORDERS, AND DEFICIENCIES IN BLOOD COAGULATION FACTORS, OR FOR PREVENTING REJECTIONS IN TRANSPLANTATION MEDICINE; SERUM PREPARATIONS, AND SERUM PROTEINS AND SOLUTIONS COMPRISING THE SAME FOR MEDICAL USE; HUMAN ALBUMIN FOR MEDICAL USE; BLOOD PRODUCTS FOR

MEDICAL USE, NAMELY BLOOD PLASMA; BLOOD SUBSTITUTES; PLASMA SUBSTITUTES AND PLASMA EXPANDERS; VACCINES, ESPECIALLY ON BASIS OF IMMUNE GLOBULINES; BLOOD COAGULATION PREPARATIONS, ESPECIALLY COAGULATION FACTORS FOR CLINICAL AND MEDICAL LABORATORY USE; ANTIBIOTICS; MEDICINES FOR TREATING THE CENTRAL NERVOUS SYSTEM; MEDICINES FOR TREATING HEART AND CIRCULATION DISEASES; MEDICINES FOR TREATING THE RESPIRATORY SYSTEM; MEDICINES FOR UROLOGICAL TREATMENT; MEDICINES FOR TREATMENT OF DIGESTIVE ORGANS AND CORRESPONDING/ADJOINING GLANDS; HORMONES; VITAMINS; IMMUNOSUPPRESSIVE, ANTI-INFLAMMATORY, AND ANTIALLERGIC MEDICINES; DERMATOLOGICAL, OPHTALMOLOGICAL AND OTOLOGICAL MEDICINES; IN-VIVO AND IN-VITRO DIAGNOSTIC PREPARATIONS FOR CLINICAL OR MEDICAL PURPOSES AND CLINICAL OR MEDICAL LABORATORY USE; ANTIBODIES, NAMELY MONO- AND POLYCLONAL ANTIBODIES FOR USE IN IN-VIVO CLINICAL AND MEDICAL DIAGNOSTICS AND FOR PATIENT THERAPY; IN VITRO DIAGNOSTIC AGENTS FOR MEDICAL PURPOSES, ESPECIALLY FOR DETERMINATION OF PROTEINS, SUCH AS ANTIBODIES, MONOCLONAL ANTIBODIES OR IMMUNE GLOBULINS, OR FOR DETERMINATIONS OF NUCLEIC ACIDS, FOR BLOOD GROUP DIAGNOSTICS AND ANTIBODY DETERMINATION, TISSUE TYPING, CELL DIAGNOSTICS, MICROBIOLOGICAL DIAGNOSTICS, AND DETERMINATION OF TOXIC COMPOUNDS; TEST KITS COMPRISING READY TO USE NUTRIENT MEDIA FOR MICROORGANISMS, ESPECIALLY BACTERIA, AND REAGENTS FOR MEDICAL AND LABORATORY USES, ESPECIALLY FOR BLOOD GROUP DIAGNOSTICS, ANTIBODY DETERMINATION, TISSUE TYPING, CELL DIAGNOSTICS, MICROBIOLOGICAL DIAGNOSTICS, DETERMINATION OF TOXIC SUBSTANCES; TEST KITS COMPRISING MONOCLONAL AND POLYCLONAL ANTIBODIES AND NATURAL AND RECOMBINANT ANTIGENES, FOR TESTS ON SEROLOGICAL AND IMMUNE GENETIC BASIS, AND REAGENTS THEREFORE FOR HUMAN AND VETERINARY MEDICAL LABORATORY PURPOSES; IMMUNOASSAYS SUCH AS ELISA'S, CONSISTING OF REAGENTS, SERA, MONOCLONAL AND POLYCLONAL ANTIBODIES, NATURAL AND RECOMBINANT ANTIGENS, AND MICROTITER PLATES, AND REAGENTS THEREFORE FOR HUMAN AND VETERINARY MEDICAL LABORATORY PURPOSES; DIAGNOSTIC PREPARATIONS FOR HUMAN OR VETERINARY MEDICAL USES IN THE TREATMENT OF INFECTIONS; MEDIA FOR BACTERIOLOGICAL CULTURES, NAMELY READY-TO-USE CULTURE MEDIA AND NUTRIENT MEDIA AND INGREDIENTS THEREOF, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 7-2-1977; IN COMMERCE 10-5-1997.

FOR: PLATES AND MULTIWELL MICROTITER PLATES FOR CELL TYPING, BLOOD AND VIRUS DIAGNOSTICS; BLOOD WARMERS; APPARATUS NAMELY INCUBATOR, CELL SORTER, CELL COUNTER, SHAKER, PIPETTES, PLATES AND VIALS FOR CELL RECOVERY AND FOR HANDLING OF CELLS, INCLUDING DISPOSABLE MATERIALS; MEASURING AND SURVEYING APPARATUS NAMELY SAMPLE HOLDER, READER, PHOTOMETER, CENTRIFUGE, SHAKER, INCUBATOR, WASHER, PARTICLE COUNTER AND AIR SAMPLER FOR REMOVAL, DETERMINATION AND QUANTIFICATION OF MICROORGANISMS IN AIR, LIQUIDS AND ON SURFACES; MEASURING AND SURVEYING KITS/SYSTEMS AND AGAR STRIPS FOR DETERMINATION AND QUANTIFICATION OF SUBSTANCES, NAMELY BLOOD SUGAR, BLOOD AND RESPIRATORY ALCOHOL, TOXIC SUBSTANCES, OXYGEN AND BLOOD CONSTITUENTS SUCH AS HEMOGLOBIN; KITS/SYSTEMS COMPRISING AGAR STRIPS, AIR SAMPLERS, PARTICLE COUNTERS, ANEMOMETERS AND AGAR STRIPS FOR DETERMINATION OF AIR BORNE GERMS AND FOR SANITARY AND HYGIENE MONITORING, LABORATORY ROBOT, FOR AUTOMATED PROCESSING OF MICROTITER PLATE BASED ASSAYS LIKE ELISAS, DNA HYBRIDIZATION ASSAYS AND CELL AGGLUTINATION TESTS; KITS/SYSTEMS COMPRISING AGAR STRIPS, AIR SAMPLERS, PARTICLE COUNTERS, ANEMOMETERS AND AGAR STRIPS FOR DETERMINATION OF AIR BORNE GERMS AND FOR DETERMINATION OF PARTICLE SIZE AND NUMBER IN AIR; KITS/SYSTEMS COMPRISING AIR SAMPLERS, SAMPLE HOLDERS AND READER FOR CLEAN ROOM AIR MONITORING; ALL THE FOREGOING FOR USE IN RESEARCH AND/OR NON-MEDICAL LABORATORIES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-2-1977; IN COMMERCE 10-5-1977.

FOR: MEDICAL, APPARATUS FOR CLINICAL OR DIAGNOSTIC USE, NAMELY APPARATUS FOR SEROLOGICAL BLOOD TYPING, BLOOD GROUPING OR SEROLOGICAL DETECTION OF BLOOD GROUPS; BOTTLES AND CONTAINERS SPECIALLY DESIGNATED FOR STORAGE AND CONSERVATION OF SOLUTIONS FOR TRANSFUSIONS AND INFUSIONS; TRANSFUSION AND INFUSION APPARATUS AND DEVICES, NAMELY CONTAINERS, SYRINGES, CATHETERS, TRANSDERMAL DELIVERY SYSTEMS COMPRISING BLOOD WARMERS AND PLASMA FOR CLINICAL USE; APPARATUS FOR CELL RECOVERY AND FOR HANDLING OF CELLS, INCLUDING DISPOSABLE MATERIALS NAMELY PLATES, SPATULA, VIALS, PIPETTE TIPS AND BEAKERS FOR CLINICAL OR DIAGNOSTIC USE; MEASURING AND SURVEYING APPARATUS FOR CLINICAL AND DIAGNOSTIC USE NAMELY SAMPLE HOLDER, READER, PHOTOMETER, DIPSTICKS, TESTSTRIPS, AND AGAR STRIPS FOR DETERMINATION AND QUANTIFICATION OF SUBSTANCES, ESPECIALLY BLOOD SUGAR, BLOOD AND RESPIRATORY ALCOHOL, TOXIC SUBSTANCES, OXYGEN AND BLOOD CONSTITUENTS SUCH AS HEMOGLOBIN; PLATES AND MULTIWELL MICROTITER PLATES FOR CELL TYPING, BLOOD AND VIRUS DIAGNOSTICS FOR CLINICAL AND DIAGNOSTIC USE;

ALL OF THE FOREGOING FOR MEDICAL, CLINICAL, DIAGNOSTIC AND/OR SURGICAL USE, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-2-1977; IN COMMERCE 10-5-1997.

OWNER OF U.S. REG. NO. 1,212,867.

COLOR IS A FEATURE OF THE MARK. THE MARK IS LINED FOR THE COLOR RED.

THE MARK CONSISTS OF THE WORD BIOTEST PROXIMATE A RED TRIANGLE DEVICE WITH A RED BALL OR CIRCLE AT EACH OF THE VERTICES OF THE TRIANGLE DEVICE. THE WORD PORTION OF THE MARK IS IN BLACK INK.

SER. NO. 76-374,498, FILED 2-21-2002.

ALICIA COLLINS, EXAMINING ATTORNEY

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing **PETITION FOR CANCELLATION OF REGISTRATION** is being filed electronically with the TTAB via ESTTA on this day, January 4, 2008.

By: _____
Elena D. Romero

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR CANCELLATION OF REGISTRATION** is being deposited with the United States Postal Service with sufficient postage as Express Mail No. ED 593565553 US addressed to Registrant at the address and on the date indicated below:

BIOTEST AG
WALDFRIEDSTRASSE 4 60528
FRANKFURT/MAIN FED REP
GERMANY

Date: January 4, 2008

By: _____
Elena D. Romero